TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1903.

No. 223.

ADELAIDE M. HARDING, PLAINTIFF IN ERROR,

vs.

GEORGE F. HARDING.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

FILED APRIL 6, 1904.

(15,208.)

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a Los Angeles District, No. 1170.

In the Supreme Court of the State of California.

GEORGE F. HARDING, Respondent and Plaintiff,
vs.
ADELAIDE M. HARDING, Appellant and Defendant.

Transcript on Appeal.

Works & Works, attorneys for defendant and appellant.
M. L. Ward, attorney for plaintiff and respondent.

Filed Sep. 10 1901.

GEO. W. ROOT, *Clerk*,
By —— ——, *Deputy*.

1 In the Supreme Court of the State of California.

GEORGE F. HARDING, Respondent and Plaintiff,
vs.
ADELAIDE M. HARDING, Appellant and Defendant.

Transcript on Appeal.

Judgment roll.

Title of Court and Cause.

Complaint.

The plaintiff above named complains of the defendant and alleges:

2 First. That in the month of November, 1855, at the city of Peoria, in the county of Peoria, State of Illinois, the plaintiff and defendant intermarried, and ever since then have been and now are, husband and wife.

Second. That the plaintiff is now and has been a resident of the State of California for the period of over one year, and of the county of San Diego over three months, immediately preceding the commencement of this action, and that plaintiff has been a resident of said county and State since the 15th day of May, 1895.

Third. That on or about the month of February, 1890, the defendant, disregarding the solemnity of her marriage vow, wilfully and without just cause, deserted and abandoned the plaintiff, and ever since has been and still continues so to wilfully and without just

cause desert and abandon the said plaintiff, and to live separate and apart from him, without any sufficient cause or reason, and against his will and without his consent.

Wherefore, the plaintiff demands judgment, that the bonds of matrimony between himself and the defendant be dissolved, and for the costs of this action.

PUTERBAUGH & PUTERBAUGH,
Attorneys for Plaintiff.

(Duly verified.)

3 Endorsed: Filed Aug. 31, 1897. Will H. Holcomb, clerk. By Walter M. Edwards, deputy.

Title of Court and Cause.

Demurrer.

Now comes the defendant in the above entitled action and demurs to plaintiff's complaint herein on the following grounds, to-wit:

The said complaint does not state facts sufficient to constitute a cause of action.

WORKS, WORKS & INGLE,
Attorneys for Defendant.

Endorsed: Received copy of within this 17th day of November, 1897. Puterbaugh & Puterbaugh, attorneys for plaintiff. Filed Nov. 17, 1897, at 10 min. past 10 a. m. Will H. Holcomb, clerk. By T. J. Storey, deputy.

4 Title of Court and Cause.

Minutes of Court of June 22, 1900.

On this day comes the plaintiff by his attorneys, Messrs. Puterbaugh & Puterbaugh, and defendant's demurrer to plaintiff's complaint is by the court dismissed for want of prosecution. Thirty days are allowed defendant in which to answer such complaint. Notice of such ruling is waived.

Title of Court and Cause.

The Answer of the Defendant, Adelaide M. Harding, to the Complaint of the said Plaintiff, George F. Harding.

First. The defendant admits that in the month of November, 1855, at the city of Peoria, in the county of Peoria, and State of Illinois, the plaintiff and defendant intermarried, and ever since then have been and now are husband and wife.

Second. The defendant upon information and belief denies that the plaintiff is now, or at the time of the commencement of this suit was a resident of the State of California. And this defendant upon information and belief denies that said plaintiff has been a resident of the State of California for a period of over one year and of the county of San Diego over three months immediately preceding the commencement of this action. And this defendant, upon
5 information and belief, denies that the plaintiff has been a resident of the said county and State since the fifteenth day of May, 1895. And this defendant denies that the said plaintiff is or ever has been a resident of said county of San Diego and State of California.

Third. This defendant denies that on or about the first of February, 1890, or, at any other time, the defendant disregarding the solemnity of her marriage vows, or wilfully or without just cause, deserted or abandoned the plaintiff. And this defendant denies that she continues wilfully or without just cause to desert or abandon the said plaintiff or to live separate and apart from him without any sufficient cause or reason or against his will or without his consent.

Fourth. This defendant alleges that on or about the seventeenth day of May, A. D. 1877, there was passed by the General Assembly of the State of Illinois an act, entitled, "An act in relation to married women;" and that said act was afterwards on the seventeenth day of May, A. D. 1877, duly approved and signed by the governor of the State of Illinois, and that said act became in force as the law of the State of Illinois on the first day of July, 1877; that said act has been thence hitherto since the first day of July, 1877, and still is, in force in said State of Illinois unrepealed as the law of the State of Illinois; and that said act is in the words and figures following, that is to say:

6 SECTION 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That married women who, without their fault, now live or hereafter may live separate and apart from their husbands, may have their remedy in equity in their own names, respectively, against their said husbands for a reasonable support and maintenance while they so live, or have so lived separate and apart; and in determining the amount to be allowed, the court shall have reference to the condition of the parties in life, and the circumstances of the respective cases; and the court may grant allowance to enable the wife to prosecute her suit, as in cases of divorce.

SECTION 2. Proceedings under this act may be instituted in the county where either the husband or wife resides, and the wife shall not be required to give security for costs in any such proceeding.

That heretofore and while the said act was in force as aforesaid, and on the third day of February, 1890, this defendant (who was recently there-fore on or about said third day of February, 1890, separated from her husband without her fault and by reason of his

fault and misconduct, and who was then, without her fault living separate and apart from her husband, the said plaintiff, in the city of Chicago, in the county of Cook, and State of Illinois), filed her certain bill of complaint in equity, in pursuance of said statute, in the circuit court of Cook county, in the State of Illinois, which court was then and there a court of
7 general jurisdiction in the said county of Cook, and State of Illinois, against the said George F. Harding, her husband, the defendant, who then resided in said county of Cook and State of Illinois, in which this defendant, as oratrix and complainant, alleged against the said George F. Harding, as defendant, in substance, among other things, that on November 7th, 1855, at Peoria, Illinois, she was married to said George F. Harding; that in 1862 they came to reside in Chicago, aforesaid, where they have since resided, and still at the commencement of said last mentioned suit resided; that as the fruit of said marriage there had been born seven children, who were then all living, and whose names and ages were in said bill, respectively stated; that this defendant, the oratrix and complainant in said bill, had always conducted herself toward her said husband and children as a true, loving, faithful and devoted wife and mother; that she had at all times and in all things, made the comfort and happiness of her husband, and the education and welfare of her children, the paramount concern of her life, and had devoted herself always and unreservedly, and almost exclusively, to the duties connected with her family and with her home. And in said bill she further alleged that upon the death of his father, July 19, 1873, the said George F. Harding inherited a large fortune, and since that time he has been a man of large wealth, amounting to a million dollars or more, and has been in receipt of a large and certain income; and that since 1872 they have lived at number
8 2536 Indiana avenue, in one of the best residence localities in Chicago, aforesaid; that until recent years she and her said husband lived happily together; that in October, 1888, the said George F. Harding, defendant in said bill of complaint, began toward her a systematic course of unkind, abusive and cruel treatment, which necessarily and inevitably rendered her life unhappy and miserable, and which he continued with increasing severity and cruelty until the first day of February, 1890, when, in consequence of such treatment, and after exhausting all means of reconciliation, she left the defendant's house, and has ever since lived separate and apart from him.

That in and by said bill of complaint last mentioned this defendant, as oratrix and complainant, further alleged that about the middle of October, 1888, the said George F. Harding, without any cause whatever, left the room and bed they jointly occupied, and has ever since occupied a separate room and bed, and has ever since refused to live or cohabit with her as his wife; that about the same time he forbade all the merchants with whom she had been accustomed to trade upon credit to give her any further credit whatever;

and since about the middle of October, 1888, he had deprived her of the use of the horses and carriages; that about October 13, 1888, he broke open a certain iron safe in the house, where she lived, in which she was accustomed to keep her jewelry, various personal papers and correspondence and valuables, and took there-
9 from all her jewelry and papers; that since October, 1888, he had withdrawn himself entirely from her society and companionship and had treated her with studied neglect and indifference; and had repeatedly in the presence of their children denounced her as a thief and a liar, and had berated her with violent and abusive language; and endeavored to persuade and force their children to take sides against her and to join and uphold him in his unkind and abusive treatment of her, and had endeavored to alienate the children from her for the purpose of wounding and crushing her through her love for them.

And that in and by said bill of complaint this defendant, as complainant therein, further alleged that said defendant therein, the said George F. Harding, during the year prior to November, 1889, had repeatedly threatened to discharge all the servants, and commanded them to take their orders and directions from him, and to disregard the orders and directions of his wife; and as far as possible incited them to be insubordinate and disrespectful and insulting to her, and deprive her of that position of authority and control in the household to which she was entitled; and that about the middle of November, 1889, putting into execution the threats so frequently made before, he discharged and sent away all the servants except the coachman, who was retained for his accommodation only, and except the woman to wash and iron, who had been permitted to
10 come two days in the week as formerly; that in consequence of such discharge of the servants this defendant, the complainant in said bill, though wholly unused to such exertions, was compelled as far as possible to perform the labor and drudgery about the house for which three servants had theretofore been employed and deemed necessary, and was thus compelled to, and did cook and clean, build fires and carry coal, and perform whatever menial service which was necessary to be done about the house so far as she was able; and that the unusual exposure, exertion and lifting brought upon her an attack of lumbago, followed by influenza and other complications, and she became seriously and painfully sick and confined to her bed, and under the care of her family physician for the space of about two weeks; that during all this time her said husband never came near her, and told the children that she was shamming, and found fault with certain of the children for taking care of her while she was thus prostrated with sickness; that at the same time he discharged the servants, as aforesaid, he also forbade his wife, this defendant, to purchase supplies for the table upon credit; and forbade the dealers in such supplies, with whom they had been accustomed for years to trade, to furnish anything on credit; and that in many other ways and particulars the said defend-

ant had wronged, abused and mistreated this defendant, his wife, and contributed to render her life in the house with him miserable and unendurable; and that the treatment to which she had been subjected as aforesaid by her said husband had impaired her health
11 and threatened her life, and had destroyed her happiness, and had necessarily rendered her life in the same home with him miserable and unendurable; that her said husband's conduct towards her had grown continually more cruel, humiliating and unjust; and finally, on the third day of February, 1890, she having endured the defendant's said treatment for more than a year, and despairing of any amelioration in his conduct, withdrew from his house, and ever since then has been and still at the time of the filing of said bill of complaint was living separate and apart from him without fault on her part.

And this defendant in and by said bill of complaint, as oratrix and complainant, prayed the premises considered, that George F. Harding, whom she made defendant in her said bill of complaint, might be summoned and might answer make to said bill, his answer under oath being waived, and that upon a final hearing thereof it might be found and decreed that she was living separate and apart from him without fault on her part, and that her said husband, defendant in said bill, might be decreed to provide her with support and maintenance in accordance with the said statute in such case made and provided, during the time she had so lived or might continue to so live separate and apart from him, to be paid or secured to her by her said husband in such manner as might be just and reasonable, and for such other, further or different relief as the facts might warrant, and to equity appertains.

12 And this defendant further answering says that such further proceedings were had in said circuit court of Cook county, in the State of Illinois, and in said suit therein last mentioned, that afterwards, and on the nineteenth day of March, A. D. 1890, the said George F. Harding, as defendant to said bill of complaint last mentioned, appeared and filed his answer in said court last mentioned, and in and by said answer he admitted the allegations of said bill as to their marriage and the birth of said children, and that they had at that time resided in the said city of Chicago, in the said county of Cook and State of Illinois, since November, 1862, for nearly twenty-eight years; and in and by such answer denied the allegations and charges of misconduct in the said bill of complaint contained.

That such further proceedings were had in said court last mentioned in the suit therein last mentioned, that afterwards on the second day of May, 1890, this defendant, Adelaide M. Harding, as complainant in said bill of complaint, by leave of said court last mentioned, filed in said court last mentioned her certain amendment to the said bill of complaint therein, in and by which said amendment she amended her said bill of complaint by further alleging, among other things that the said George F. Harding both before and

since October, 1888, at Chicago, in said county of Cook aforesaid, and at divers other places in Illinois and elsewhere, had committed
13 adultery with a woman sometimes going under the name of Mrs. A. R. Louis, and sometimes under the name of Madam von Louis, or Madam von Louiy; and that this de-von Louis, or Madam von Louiy; (who, the evidence hereinafter mentioned showed also, went under the name of A. R. Lingard, or Madame Lingard·); and that this defendant, as such complainant, first came to the knowledge thereof by accident in August and September, 1888; and that about October, 1888, her said husband became aware of the fact that she, this defendant, possessed such knowledge. That in and by said bill of complaint as so amended this defendant further charged upon information and belief that her said husband, the defendant therein, had committed adultery with divers other persons whose names were to her unknown, with the exception thereinafter stated, the time and places thereof being also unknown to her.

That such further proceedings were had in said last named court, in said last mentioned cause, that afterwards, on the seventh day of May, 1890, the said George F. Harding, as defendant, answered the said bill of complaint of this defendant as so amended, and thereby reaffirming all the statements and allegations of his original answer to said bill denied the said allegations of said bill as amended as aforesaid.

That such further proceedings were had in said court last
14 named, in said suit last mentioned, that this defendant as complainant therein, filed her replication to the said answer of the said defendant, and thereby the issues in the said suit last mentioned upon the said pleadings therein were made up; that afterwards such further proceedings were had that a large amount of evidence was taken by depositions under and in accordance with the practice of said last named court, in the said cause last mentioned, by and on behalf of this defendant as complainant, to sustatin the allegations of her said bill of complaint as so amended and the issues in said suit last mentioned on her behalf.

That afterwards, and while the said suit last mentioned was still so pending in said circuit court of Cook county, as aforesaid, to-wit, on the 3rd day of January, 1893, the same being one of the days of the December term, A. D. 1892, of said last named court, the said George F. Harding, in his own proper person and by his solicitor, appeared in said last named court in said suit last mentioned, and presented to the said court in open court in said last mentioned suit, his certain statement in writing by him duly signed, and filed the same in said court in said last mentioned cause, and made the same a part of the record of said last mentioned suit in said last named court; and that said statement in writing last mentioned was as follows, that is to say:

15 "STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of Cook County.

ADELAIDE M. HARDING }
vs.
GEORGE F. HARDING. }

Petition for Separate Maintenance.

"When this suit for separate maintenance began, the plaintiff had "in her hands a large sum of money and property, convertible into "money and applicable to her support, received from me and from "my family; and when this shall be expended and applied to her "support, for which it was given her, at that time whatever the re- "sult of this case, it would be my duty as I understand it, to give "her further support; and this I should do whatever the result of "this case, and without reference to whether she can exact it or not.

"I am confident of making good my defense, if the case must be "tried, but the considerations suggested make the fact that the "plaintiff may prove to have no real cause of action immaterial.

"Hence it seems to me to be wise in the interest of my family and "of peace, if I can put an end to this litigation to do so by consent-
"ing to a decree giving her for separate maintenance such a
16 "sum as the court may find to be just and equitable, after a
"due consideration of the evidence bearing upon the amount "of the allowance. Hence I give my consent that a decree for sepa- "rate maintenance shall be entered in favor of the plaintiff without "a finding or trial of the issue in this case.

"That this consent is not collusive is sufficiently shown by the "length and character of the litigation. I further offer and stand "ready to make such other or further or different stipulation by "amendment of the pleadings or otherwise, as may, in the opinion "of your honor, be required to make it unnecessary for the court to "hear and decide upon the issues and evidence in this case after a "long and expensive hearing.

"To this end I declare my willingness to stipulate and I do hereby "stipulate that the plaintiff, at the time of the commencement of "this suit, was living and ever since has been living separate and "apart from her husband without her fault, and may take a decree "with my consent for such sum as may be reasonable and just for "her separate maintenance.

"This is the same offer which I have made by way of an attempt at "compromise ever since the commencement of this suit, in which
"effort a compromise I have not hesitated to offer double the
17 "amount that, in my opinion, should be allowed for her sepa-
"rate maintenance by the court.

"(Signed) GEO. F. HARDING, *Pro Se.*

"WM. J. AMMEN,
"*Solicitor for D'f't.*"

That in and by said statement in writing and by so presenting, and reading, and filing the same, the said George F. Harding, as defendant in said suit in said circuit court of Cook county, did solemnly admit of record therein that this defendant, Adelaide M. Harding, at the time of the commencement of said suit in the said circuit court of Cook county, to-wit, on the 3rd day of February, 1890, was living, and ever since had been living separate and apart from her husband, the said George F. Harding, without her fault.

That the said living by this defendant, Adelaide M. Harding, separate and apart from her husband, the said George F. Harding, which is in the said statement of the said George F. Harding mentioned, as aforesaid, (and which is thereby admitted to be without her fault), was and is the same identical living separate and apart from the said George F. Harding which is referred to in the said complaint of the said George F. Harding against this defendant herein, and not otherwise; and that the separation and leaving by this defendant of said George F. Harding, which is in the said bill of complaint of this defendant as complainant in the said
18 circuit court of Cook county alleged, as above mentioned, and the living thereafter separate and apart which the said George F. Harding in and by the said statement admits of record, was without her fault, as aforesaid, is the same separation and leaving of him by this defendant, and the same living separate and apart from him which is mentioned and referred to by the said George F. Harding in his said complaint herein, and as to which he in his said complaint herein falsely alleges, was a desertion and abandoning of him, and a continuing wilfully and without just cause to desert and abandon him and to live separate and apart from him without just cause or reason and against his will and without his consent.

That this defendant herein pleads the said statement and solemn admission of record of the said George F. Harding in the said circuit court of Cook county, as a bar herein to his said complaint in this superior court of San Diego county, aforesaid.

Fifth. That afterwards, on the 17th day of January, 1893, such further proceedings were had in said cause in said circuit court of Cook county, that this defendant filed therein her certain counter-statement in writing, as follows:

19 STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of Cook County. In Chancery.

ADELAIDE M. HARDING }
vs.
GEORGE F. HARDING. }

Counter-statement of Adelaide M. Harding, Complainant.

"Adelaide M. Harding, complainant in the above entitled cause, "declares and stipulates as follows:

"That as to the document or voluntary stipulation signed by the "defendant, George F. Harding, filed in said cause on Janury 3rd, "1893, the same was submitted to the court and made and filed "without any knowledge on her part; that she is, and always has "been, confident of the justnesss of her cause, and of maintaining "the same in court, and that the evidence heretofore taken in "said cause and the advice of her counsel, give her great certainty "of maintaining her cause; that she is desirous of avoiding scan-"dal and expense, and in the interests of the family and of peace, to "put an end to this litigation, and that on this account she has, "through her counsel, been endeavoring to arrive at a compromise "settlement of the question of the amount to which she is
20 "entitled herein, and has been willing at all times to make "such a settlement of the said question of amount upon a "basis which, so far as the matters in said written admission or vol-"untary stipulation on file in said cause are concerned, was on the "basis of the same, viz.: the admission by the defendant and a "finding and decree of this court thereon, that she was at the "time of the filing of the bill herein, living separate and apart "from the defendant without fault on her part, and has been so liv-"ing ever since except as to the amount of the allowance, and that "as to the amount of the allowance and the terms of payment, the "parties heretofore arrived at a substantial agreement in such at-"tempts to compromise. The points of variance on which said set-"tlement was impossible, were the fact that the defendant was not "willing to admit the fact that the complainant herein, at the "time of bringing the suit, was living, and since that time has "been living separate and apart from defendant, without fault on "her part; or, that any decree finding the same or fixing the "amount of the allowance of alimony should be made; or that any "decree should be entered in this cause upon which a settlement "of this cause could be made, except an order of court approving "such contract as the parties might make, and dismissing the bill "of complaint herein, and the basis of the settlement required by "defendant further involved the release by the complainant,

"of all causes of action against the defendant, not only
"for past misconduct as the husband of complainant, but
21 "also for or on account of any future misconduct of defendant
"as the husband of complainant, and also involving such
"form of agreement as should not operate as a bar in favor of com-
"plainant as against any suit which might be brought by defend-
"ant against the complainant for a divorce for alleged desertion,
"with which defendant wrongfully charges complainant in his an-
"swer herein.

"That the parties hereto in such negotiation for a compromise,
"reached an agreement as to the amount of the allowance of ali-
"mony or payments for complainant's support, and for the support
"of Susan Grace Harding and Rebecca Madeline Harding, minor
"daughters of said parties, residing with the complainant, which
"defendant should make to complainant, and said Susan Grace
"and Rebecca Madeline Harding, and the amount of allowance
"which said defendant offered to pay upon such compromise, is as
"follows:

"The sum of six thousand dollars per annum for the support and
"maintenance of the complainant, Adelaide M. Harding, during
"her natural life, commencing with the first day of June, 1892,
"payable in advance in quarterly instalments of fifteen hundred
"dollars each, and the further sum of one thousand dollars per
"annum for the support and education of Susan Grace Harding,
"the daughter of said parties, from the first day of June, 1892, until
"and including her twenty-first birthday, and the like sum
22 "of one thousand dollars per annum for the support and
"education of Rebecca Madeline Harding, commencing with
"said first day of June, 1892, to and including her twenty-first birth-
"day, and as to the payments to be made to Susan Grace Harding
"and Rebecca Madeline Harding, respectively, after they reach
"the age of eighteen years, and until they reach the age of
"twenty-one years, such payments shall be deposited in such
"bank as they may elect, to their credit, respectively, or to the
"credit of such agent as they may each, respectively, designate
"by writing; provided, however, that in the event of the death of
"said Susan Grace Harding or Rebecca Madeline Harding, the pay-
"ments to the daughter so dying or to her mother on her account,
"shall thereupon cease; the intention thereof being to pay at the
"rate of one thousand dollars per year for the support of said Susan
"Grace Harding and Rebecca Madeline Harding, each respectively,
"from the date of the first day of June, 1892, to and including the
"date of the twenty-first birthday of each of said daughters respect-
"ively, and to make the payments at the rate of one thousand dol-
"lars per annum for each of said children for the portion of the year
"intervening between the first day of June, 1892, and the date of
"the next birthday thereafter, of each of said daughters. All these
"payments to or for the said daughters shall cease and end at the
"death of the defendant, George F. Harding, in case he shall die

"before the said daughters, or either of them, arrive at the
23 "age of twenty-one years. And the further sum of two
"thousand three hundred fifty dollars to be paid to the
"complainant in cash upon the signing of said contract; and said
"defendant, George F. Harding further agreed in consideration of
"the premises, that at the time of the execution and delivery of
"said contract of settlement, to execute, acknowledge and deliver a
"warranty deed conveying in fee simple to Susan Grace Harding
"and Rebecca Madeline Harding, but subject to a trust deed now
"thereon securing a note of five thousand dollars and interest which
"the grantees here assume and agree to pay, the real estate sit-
"uated in the city of Chicago, Cook county, Illinois, described as
"follows:

"Lot twenty-three (23) and the north nine (9) feet of lot twenty-
"four (24), in Groves & Waldo's re-sub-division of part of Grove's
"subdivision of part of the south half (½) of the north half (½) of the
"north east quarter (¼) east of Cottage Grove avenue, of section (34),
"township thirty-nine (39) north range fourteen (14) east of the
"third principal meridian, and subject also to a certain lease thereon,
"expiring April 30th, 1893, which lease and the right of rent
"thereunder accruing until the expiration thereof, said defendant,
"George F. Harding, reserved to himself.

"And as security for the payment of the moneys provided for in
"said proposed contract of settlement to be paid by the said
24 "George F. Harding to said Adelaide M. Harding, Susan
"Grace Harding and Rebecca Madeline Harding, said
"George F. Harding agreed to execute, acknowledge and deliver
"a deed of trust to such person or persons as the said Adelaide *H.*
"Harding shows as trustee or trustees, conveying all the farm lands
"owned by him in the counties of Warren, Mercer and Henderson,
"in the State of Illinois, for the purpose of said security, in fee
"simple, subject, however, and subject only to the mortgage or trust
"deed now pending or in force on parts of said lands, securing
"the indebtedness of said George F. Harding, amounting to the
"sum of eighty-five thousand dollars, due to the Firemen's Insur-
"ance Company of Chicago, which mortgages are recorded in the
"recorder's office of said counties, respectively, which indebtedness
"the said George F. Harding agreed to pay, and to forever save the
"said Adelaide M. Harding and her said security thereunder pro-
"vided for, wholly harmless therefrom and unaffected thereby, and
"further guaranteeing the final payment and discharge thereof, and
"also the prompt payment of the sums of money provided to be
"paid to the said Adelaide M. Harding and the said daughters
"according to the tenor and effect of said contract, and that said
"deed of trust should be a security for each of said payments, the
"same as if a separate trust deed were made charging and
"applying as a separate trust for each of said payments.

25 "That while the times of payments were provided for in
"drafts of agreement assented to in that respect by the defend-

" ant, or prepared by him at later interviews, the said terms for pay-
" ment were modified by him so as to require further time for said
" payments during 1893, by an extension of four months on each
" payment payable in 1893; that the matter of the settlement of said
" extension had not been completed at the filing of said voluntary
" stipulation by the defendant; that these sums so assented to and
" proposed by him, were also assented to by complainant, and the
" arrangement of the extension of the times of making such payments
" was not made a vital point in said attempted settlements, although
" not entirely adjusted, but the failure to arrive at an entire com-
" promise was because the defendant not only was unwilling to ad-
" mit the fact that complainant was at the time of the filing of the
" bill in this suit and thence hitherto living separate and apart from
" defendant without her fault, or, that a decree, except a decree ap-
" proving such agreement as might be made and dismissing the suit
" might be entered in the cause, but also because defendant insisted
" during the first attempts at negotiation, that there should be a de-
" cree in this cause in his favor upon the issues herein, and that at
" the end of the negotiations when it was supposed that the parties
" had arrived substantially at terms of settlement in other respects,
" he insisted that nothing in the agreement that might be made, or
" in the disposition of this cause, should be a bar to his bring-
26 " ing suit for divorce, based upon the alleged cause of deser-
" tion by complainant, when, on account of defendant's mis-
" conduct, complainant without fault on her part, separated from
" defendant and brought this suit.

" The voluntary stipulation by defendant filed herein, removes
" the principal elements of difference on account of which the at-
" tempted settlement between the parties to this cause failed. Al-
" though complainant insists and always has insisted that the amount
" offered by defendant is less than one-half of what defendant is able
" to pay, and what is necessary and suitable to the condition in life
" of the parties, and what the defendant should be decreed to pay,
" still complainant says that for the sake of now promptly securing
" family peace, which has been disturbed by the litigation made
" necessary by the course of defendant, and now promptly securing
" an end of this litigation, and for the sake of prompt payment of
" said amounts so offered at the times provided therefor, without
" further litigation thereon, she is willing, upon a decree, finding
" that complainant was living separate and apart from defendant
" without fault on her part, being now promptly entered such as the
" said voluntary stipulation of defendant justifies to have the amount
" of her allowance now promptly fixed by decree at the amount
" which the defendant has offered as aforesaid.

" Inasmuch as the amounts of the payments to the two
27 " daughters which were included in the terms of said pro-
" posed settlement offered by defendant, could only be pro-
" vided for herein by decree allowing the same to complainant, the
" allowance to the complainant in the decree should be eight thou-

"sand dollars per annum, to and including the twenty-first year of "the elder of said daughters; then seven thousand dollars per "annum to and including the twenty-first year of the younger of "said daughters, and thereafter six thousand dollars, as provided in "said proposed settlement offered by defendant.

"That if defendant had in such negotiation as has heretofore oc- "curred, admitted the fact that complainant was living separate and "apart from him without fault on her part, as is done in such vol- "untary stipulation, and offered that complainant might have a de- "cree in this cause on that basis, this case would long ago have "been settled and disposed of.

"(Signed) ADELAIDE M. HARDING."

Sixth. That afterwards, in the said circuit court of Cook county, in the said cause hereinbefore mentioned, and while the said cause therein was still pending, and while the said statement and admission of record of said George F. Harding so remained of record therein, the parties to said suit in said circuit court of Cook county, being then and there present by their counsel, and the said George F. Harding being also then and there present in person, the
28 said circuit court of Cook county, by the consideration of said court, entered its certain order in said suit therein upon the said statement and admission of the said George F. Harding, wh-ch order was as follows:

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GEORGE F. HARDING.

"This cause coming on to be heard upon the motion to set the "said cause down for hearing, and to hear the same, it is ordered "that this cause be, and the same is, referred to Horatio L. Wait, one "of the masters in chancery of this court, to take evidence and re- "port the same with his conclusions herein, upon the issue in ques- "tion as to the amount or amounts, if any, to be allowed complain- "ant, and to be decreed to be paid by defendant to complainant for "alimony, support or otherwise herein, and upon other issues herein "than the question as to whether complainant at the time of the "commencement of this suit was, and since that time, has been and "is living separate and apart from her husband, the defendant, "without her fault, said defendant having admitted upon the "record herein, and now admitting in open court, that the com- "plainant was at the time of the commencement of this suit, and "since that time has been and is living separate and apart from her "said husband without her fault.

"And it is further ordered that upon said hearing, all
29 "competent evidence heretofore taken in this cause may be "read upon said hearing before the master, and other com- "petent evidence may be introduced by either party, and that the

"said master submit his report herein within fourteen days from "and after this date; and that the respective parties have such por- "tions of time, respectively, within said time so limited, for the in- "troduction of evidence and argument, as the said master shall "prescribe."

That afterwards, on or about the 15th day of April, A. D. 1896, such further proceedings were had in said last mentioned suit in said circuit court of Cook county, that the said order last mentioned was amended by substituting in place of the words in said order "and now admitting in open court," the words, "as by his written stipulation filed here on Jan'y 3rd, 1893, and for the purpose of this trial only."

That such further proceedings were had in said suit in the circuit court of Cook county that on the 22nd day of September, A. D. 1896, said Horatio L. Wait, master in chancery of said last mentioned court, to whom said cause was referred by said last mentioned order, in pursuance of said order of reference, filed in said circuit court of Cook county his report, in and by which said report, he did report the evidence taken by him under said order, and his conclusions therein, and by such report, among other things, the said master found, concluded and reported, that said complainant in said last mentioned suit the said Adelaide
30 M. Harding was entitled to the sum of $8,000 per year for her support, and a separate maintenance, to be paid by said George F. Harding, and was entitled and should be allowed certain other sums therein mentioned for the support of the children of said parties therein mentioned; to be paid by said George F. Harding; and said report having been excepted to by this defendant as complainant, and by said George F. Harding as defendant, such further proceedings were had in said circuit court of Cook county in said suit therein, that afterwards said suit came on to be heard in said last mentioned court, as in the decree hereinafter mentioned, and the said parties having been heard therein, and the said circuit court of Cook county having taken said cause under advisement, and having duly considered said case, did enter its final decree in the said suit last mentioned on July 26th, 1897, which decree was as follows:

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vs.
GEORGE F. HARDING.
} Gen. No. 70020. Term No. 77.

"This cause having heretofore at the September and October "terms, 1896, of this court come on to be heard, upon the bill of "complaint as amended herein, the answer as amended of the de- "fendant thereto, the replication of the complainant to such answer, "and the petitions and application of complainant for the
31 "custody of children, and upon the report of Horatio L. Wait, "master of chancery of this court filed herein on the 22nd

" day of September, 1896, under and in pursuance of the order of " reference to him theretofore entered herein, and upon the evidence " referred to in the report of said master and upon which the said " hearing before him on said reference was had, and upon the ex- " ceptions thereto on the part of the complainant filed September 22, " 1896, and upon the exceptions thereto on the part of defendant " filed September 22, 1896; and the court having at the close of the " said hearing taken said cause under advisement; and this cause " also having come on to be heard at the January term, 1897, of " this court, (said cause being under advisement as aforesaid,) upon " the petition and application of the complainant for an allowance " of solicitor's fees to the complainant and against the defendant " herein, and for the allowance to the complainant and against the " defendant for expenses of prosecuting her suit, and upon the peti- " tion of the defendant theretofore on January 22nd, 1897, filed " herein, and the complainant's answer thereto filed February 4th, " 1897, and upon the proofs and evidence taken and heard in open " court upon said hearing last mentioned; and the court having " heard the arguments of counsel and having thereupon taken the " said cause under advisement:

" And the court having now considered and being duly
32 " advised in the premises, doth find that the said complain-
" ant, at the time of the commencement of this suit, was liv- " ing and ever since that time has lived and is now living separate " and apart from her husband, the said defendant, without her fault; " and that the equities of this cause are with the complainant.

" And the court doth further find and adjudge that the findings " and conclusions of the said master in chancery, Horatio L. Wait, " in his said report contained, are correct, and that the exceptions " of each of the parties thereto are not well taken, and that such ex- " ceptions and each of them be and the same are overruled. But " the court doth further find that since the taking of the proofs and " evidence before said master was concluded, and since the said " hearing upon the exceptions to the said report of the said master " at the September and October terms of this court, a change has so " taken place in the value of property and the circumstances of the " defendant, in that the rental value of the property of the defend- " ant has been *temporarily* depressed and reduced and the amount of " the defendant's income therefrom temporarily reduced in the opin- " ion of the court, that the allowance fixed by the master should be " reduced to the amounts hereinafter specified; it is therefore ordered, " adjudged and decreed by the court that the complainant is entitled " to an allowance from defendant for her reasonable support and " maintenance while they, the said complainant and the said defend-
" ant, have so lived separate and apart, and while they do
33 " so live separate and apart; and that, having reference to
" the condition of the parties in life, and the circumstances of " this case, the said complainant be allowed and that the defendant " do pay to the complainant, the sum of six thousand four hundred

"dollars ($6,400) per year from the date of the entry of this decree,
"(this decree being without prejudice to such order of July 1st, A. D.
"1890, as to the amount so unpaid thereunder), and that the defend-
"ant do pay to the complainant as and for such allowance for her
"separate maintenance hereby made accruing from and after the
"entry of this decree, the said sum of six thousand four hundred
"dollars ($6,400) a year, from and after the date of the entry of this
"decree until the further order of the court, and that the said sum
"of six thousand four hundred dollars ($6,400) from and after the
"entry of this decree, be paid in monthly installments of five hun-
"dred thirty-three and one-third dollars ($533⅓) per month, pay-
"able in advance on the 26th day of each and every month com-
"mencing on the 26th day of July, 1897, until the further order of
"this court.

"And the court doth further find that the said complainant has
"supported the daughters of the complainant and defendant, Susan
"Grace Harding and Madeline Harding, from the date of the filing
"of the bill of complaint herein until the said daughters, respect-
"ively, arrived at the age of eighteen years; that the said
34 "Susan Grace Harding became eighteen years of age on the
"10th day of December, 1892, and the said Madeline Harding
'became 18 years of age on the 18th day of November, 1896; and
"the court doth find, order and adjudge and decree that the com-
"plainant have and she is hereby awarded the custody of the said
"daughters from the date of the filing of the bill of complaint
"herein; and that the defendant do pay to the complainant, within
"twenty days from the date of the entry of this decree the sum of
"two hundred dollars ($200) per month, for each and every month,
"from the date of the filing of the bill of complaint herein until the
"12th day of December, 1892, as and for the maintenance of the said
"two daughters until said last mentioned dates, and the sum of one
"hundred dollars ($100) per month from the said 12th day of De-
"cember, 1892, until the 18th day of November, 1896, as and for
"the support and maintenance of the said Madeline Harding be-
"tween said two dates last mentioned, the said sums amounting in
"the aggregate to the sum of eight thousand one hundred and fifty-
"six dollars and sixty-one cents ($8,156.61).

"And it is further ordered, adjudged and decreed that the de-
"fendant do also pay to the complainant or her solicitors, John S.
"Miller and Merritt Starr, as solicitor's fees herein of the said solicit-
"ors last mentioned, the sum of eight thousand dollars ($8,000)
"within twenty days from this date.

"And the court doth further order, adjudge and decree
35 "that the defendant do also pay to the complainant within
"twenty days from the date of the entry of this decree
"the further sum of nine hundred ninety-six dollars and forty-seven
"cents ($996.47), which she has paid or incurred to enable her to
"prosecute this suit in excess of the sum heretofore allowed to her
"therefor, and which is allowed to her for that purpose.

"And it is further ordered that the defendant do pay the costs of "this suit to be herein taxed.

"And it is further ordered, adjudged and decreed that this decree "be made a lien on the real estate of the defendant; and in case of "default in the payment of the said installments of money as the "same become due, or costs herein, that execution issue thereon. "And it is ordered that either party be at liberty to apply to the "court as circumstances may require.

"And it is further ordered and decreed that the petition and mo- "tion of defendant to reduce or modify, or suspend or release, or dis- "charge the defendant from payment of the allowance made for "temporary alimony by the decretal order entered herein on the "first day of July, 1890, or to modify or affect said order last men- "tioned be and the same is denied; and that this decree is without
"prejudice to the said decretal order of July 1, 1890, as to the
36 "amounts of money which have accrued or become payable
"to the complainant thereunder at the time of the entry of "this decree.

"And the said defendant objects and excepts to the foregoing de- "cree, and to every finding and every portion thereof, severally, and "prays an appeal therefrom to the appellate court in and for the "first district of Illinois, which appeal is hereby allowed, and twenty "days are hereby given said defendant in which to file an appeal "bond in the sum of $5,000.00 with security to be approved by the "clerk of this court.

"And by agreement of the parties to this cause said defendant "and complainant are each hereby allowed sixty days from this "date within which to present a certificate of evidence as to the evi- "dence and proceedings of, in, during or subsequent to the January "term, 1897, of this court in said cause."

That the said George F. Harding never did, in any way, withdraw or retract the said statement and admission of record in the said suit in the said circuit court of Cook county, which is above mentioned; and that said proceedings and decree in said circuit court of Cook county in said suit from and after the filing of said statement and admission of record, on the 3rd day of January, 1893, proceeded upon the said statement and admission of record of said George F. Harding. And so this defendant says that the said decree of the said city court of Cook county and
said court last mentioned in entering the said decree.
37 proceeded upon the statement and admission of record of the said George F. Harding, in finding and adjudging in said decree that this defendant was, at the time of the commencement of said suit in said circuit court of Cook county, to-wit, on the 3rd day of February, 1890, and ever since had been, and then still was, living separate and apart from the said George F. Harding, without her fault; and that said decree was, in and with respect to said finding and judgment in the said final decree of said circuit court of Cook county (that this defendant as complainant, at the

time of the commencement of said suit in said circuit court of Cook county was living, and ever since that time had been living, and at the time of the entry of said final decree was living, separate and apart from her husband, George F. Harding, without her fault), free of error and unimpeachable and irreversible at the suit or on the contention of said George F. Harding.

And so this defendant sets up and pleads the said orders and decree of the said circuit court of Cook county in the said suit therein, and the solemn admission of record of said George F. Harding therein, as aforesaid, in bar of this suit.

Wherefore the defendant demands judgment in her favor, etc.

ADELAIDE M. HARDING, *Defendant.*
WORKS & WORKS, *Her Attorneys.*

38 Duly verified.

Endorsed: Received copy of the within this 1st day of October, 1900. Puterbaugh & Puterbaugh, attorneys for plaintiff. Filed Oct. 1, 1900. Will H. Holcomb, clerk.

Title of Court and Cause.

The Supplemental Answer of Defendant, Adelaide M. Harding, to the Bill of Complaint of the said Plaintiff, George F. Harding.

First. Defendant adopts her answer heretofore filed herein; and supplements the same with the following, and by way of supplement thereto, states:

Second. That such further proceedings were had in the said suit in the circuit court of Cook county, in the State of Illinois, which is in her said original answer herein mentioned and referred to, after the entry of the said final decree of July 26, 1897, which in said answer mentioned and referred to, that said George F. Harding prayed and prosecuted his appeal from said decree to the appellate court for the first district of Illinois, to the October term of
39 said last named court, which convened next after the entry of said decree, to-wit, on the first Tuesday of October, 1897; and that such further proceedings were had in said last mentioned court that by the judgment and consideration of said court afterwards, to-wit, on the ninth day of January, 1899, one of the days of the said October term of said last mentioned court, the said final decree of the circuit court of Cook county was affirmed; reference to which judgment and order of affirmance of said appellate court, or to a copy thereof ready to be produced, is hereby made for greater certainty.

Third. That thereupon afterwards such further proceedings were had in said last mentioned suit that the said George F. Harding prayed and was allowed and prosecuted an appeal from the said

judgment of affirmance entered in the said appellate court to the supreme court of Illinois, to the April term of said last mentioned court thereafterwards convened, to-wit, on the first Tuesday of April, A. D. 1899; and that such further proceedings were had in the said supreme court, in said last mentioned cause, that said cause was submitted to said last mentioned court upon the briefs and arguments of counsel for the respective parties at said April term of said court, and was taken under advisement by the said supreme court and continued under advisement until the seventeenth day of June, A. D. 1899, one of the days of the June term of said
40 supreme court; and thereupon on said 17th day of June, 1899, such further proceedings were had in said supreme court that by the consideration and judgment of said last named court the said final decree of the circuit court of Cook county was modified by reducing the amount to be paid to this defendant, Adelaide M. Harding, from the sum of sixty-four hundred dollars ($6,400) per annum, directed to be paid to her by the said final decree of the said circuit court, to the sum of thirty-six hundred dollars ($3,600) per annum; to be paid in monthly installments of three hundred dollars ($300), and that the decree to be rendered in pursuance of the judgment and order of the supreme court should provide that such alteration in the allowance for alimony might be made by future decree or decrees as should or might be found to be just and reasonable; and that the decree of the circuit court and the judgment of the appellate court in said cause were affirmed by the said judment and order of the supreme court so modified and ordered to be modified, and in that respect they were reversed; and by the judgment and order of the said supreme court in said cause the said cause was remanded to the circuit court of Cook county with directions to enter a decree in conformity with the opinion and judgment of the said supreme court; and that the opinion of the said supreme court upon the said appeal in said cause is reported in volume 180 of the Illinois Reports, at
41 pages 481 to 524, and reference to a copy of the opinion of said supreme court is hereby made for greater certainty.

Fourth. That such further proceedings were had in said supreme court that the said George F. Harding filed in the said supreme court his petition for a rehearing of the said cause, which petition for rehearing was afterwards, by the consideration and judgment of the said supreme court, on October fifth, 1899, one of the days of the October term, A. D. 1899, of the said supreme court, denied.

Fifth. That afterwards such further proceedings were had in the said suit that the mandate of the said supreme court of Illinois in said cause last mentioned, in accordance and in pursuance of the said opinion and judgment of the said supreme court upon said appeal, was duly filed in the said circuit court of Cook county; and in the said circuit court of Cook county such proceedings were thereupon afterwards had upon the said mandate that the decree of the said circuit court of Cook county in the said suit last mentioned was

entered in accordance with the said mandate, to-wit, on December 8, 1899, and which last mentioned decree is as follows:

"December 8th, A. D. 1899, November Term.

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42 "This day come again the parties hereto by their solicitors, "respectively; and this cause coming on to be heard on the "final order of the supreme court of Illinois, in said cause, entered "on the seventeenth day of June, A. D. 1899, a duly certified copy "of which was, pursuant to the statute in such case made and pro- "vided, duly filed herein in the office of the clerk of this court on "the fifteenth day of November, A. D. 1899;—and upon the motion "of complainant herein by her solicitors here now made in open "court on due notice to the defendant, that the court here now en- "ter its decree modifying the decree heretofore entered herein, on "the twenty-sixth day of July, A. D. 1897 in conformity with the "said order of said supreme court of Illinois; and this court having "heard said motion and having inspected said duly certified copy "of the order of said supreme court of Illinois, and having heard "arguments of counsel and being advised in the premises, doth here "now order, adjudge and decree that in conformity with said order "and mandate of said supreme court said final decree heretofore "entered herein on the twenty-sixth day of July, A. D. 1897, be, "and the same is hereby modified by reducing the amount pro- "vided by said decree of July 26, 1897, to be paid thereunder by "the defendant to the complainant from the sum of six thousand "four hundred dollars ($6,400) per year in said decree of July 26 "1897, mentioned, to the sum of three thousand six hundred dollars

43 "($3,600) per annum, to be paid in monthly installments "of three hundred dollars each; and that for that purpose "the words 'three thousand six hundred dollars ($3,600)' "be and the same are substituted in the said decree of July 26, 1897, "in lieu and stead of the words 'six thousand four hundred dollars "($6,400)' where the same occur, and that the words 'three hundred "dollars ($300)' be and the same are substituted in the said decree "of July 26, 1897, in lieu and stead of the words 'five hundred and "thirty-three and one-third dollars ($533⅓)' where the same occur.

"And the court doth further order, adjudge and decree that such "alteration of this decree in the allowance of alimony may be made "by future decree or decrees as shall or may be found to be just and "reasonable.

"And the court here now further orders, adjudges and decrees "that said decree of this court entered on said July 26th, 1897, so "far as not inconsistent herewith, and that said decree of July 26,

"1897, as so modified, stands in full force; and that the same be "obeyed by the parties hereto.

"And it is further ordered that the petition heretofore filed by 'complainant for additional allowances, being for solicitors' fees, etc., "since the entry of said decree of July 26, 1897, be reserved and be

"and is set down for hearing on the 3rd day of January, 1900,

44 "at ten o'clock, a. m. and said defendant is ruled to answer "said petition within ten days from this date."

(Entered of record at page 262 of Chancery Record No. 327 of the circuit court of Cook county, Illinois, December 8, A. D. 1899.)

That said last mentioned decree and the said final decree of July 26, A. D. 1897, in said original answer referred to, as so modified by the said decree of December 8, 1899, still stands in full force in all respects; unmodified and unreversed.

Sixth. That the said George F. Harding has acquiesced in the said decree last mentioned, by paying to the said Adelaide M. Harding and has paid to the said Adelaide M. Harding large sums of money in pursuance of and as directed by the said decree last mentioned.

And this defendant pleads and sets up the said suit in the circuit court of Cook county and the said final decree therein as so modified and entered, as a bar to and estoppel of the said suit and supposed cause of action set up by the said plaintiff herein.

WORKS & WORKS,
Attorneys for Defendant.

(Duly verified.)

Endorsed: Received copy of the within this 4th day of January, 1901. Puterbaugh & Puterbaugh, attorneys for plaintiff.

45 Filed Jan. 4, 1901. Will H. Holcomb, clerk. By Walter M. Edwards, deputy.

Title of Court and Cause.

Findings of Fact and Conclusions of Law.

This cause came on regularly for trial on the 14th day of January, 1901, and Messrs. Puterbaugh & Puterbaugh appearing as attorneys for the plaintiff and Messrs. Works & Works appearing as attorneys for the defendant, and the cause being submitted upon the complaint and upon the answer and supplemental answer of the defendant, filed herein; and from the evidence introduced by the respective parties herein and the court being fully advised in the premises, finds the facts as follows:

I.

That the plaintiff and defendant were married in the month of November, 1855, at the city of Peoria, county of Peoria, State of

Illinois, and cohabited as husband and wife until about the first day of February, 1890.

II.

That the plaintiff is a *bona fide* resident of the county of San Diego, State of California, and has been since the 15th day of
46 May, 1895; and that said plaintiff has been a resident of this State for more than one year and of said county for more than three months immediately preceding the commencement of this action and the filing of the complaint herein.

III.

That on or about the first day of February, 1890, the defendant, disregarding the solemnity of her marriage vow, did, willfully and without just cause, desert and abandon the plaintiff, and ever since then has and so continues to willfully and without just cause, desert and abandon the plaintiff and to live separate and apart from him, without any sufficient cause or reason, and against his will and without his consent.

IV.

The court further finds that all the allegations in the complaint herein are true and that all the allegations, averments and denials in conflict with the allegations in said complaint, contained in the answer and supplemental answer of the detendant, herein, are untrue.

V.

The court further finds that there is no community property or homestead in this State; that the circuit court of Cook county, Illinois, a court of competent jurisdiction, in a proceeding for separate maintenance by the defendant against the plaintiff, has entered de-
crees for allowances of alimony in favor of the defendant and
47 against the plaintiff, which are allowances, adjudged by the supreme court of Illinois to be equal to the present ability of the estate of the husband, with the right reserved to the wife to increase the same when the faculties of the husband may be decreed to warrant an increase of such allowance.

As conclusions of law from the foregoing facts the court finds:

I.

That the plaintiff is entitled to a decree of this court dissolving the bonds of matrimony heretofore existing between the plaintiff and defendant herein, decreeing the plaintiff and defendant each to be freed and absolutely released from the bonds of matrimony and all obligations thereof.

II.

That this court in this case has no jurisdiction to limit or in any way effect the decree of the circuit court of Cook county, State of Illinois adjudging a separate maintenance to the defendant.

N. H. CONKLIN.

Dated, January 31st, 1901.

Endorsed: Filed Feb. 1st, 1901. Will H. Holcomb, clerk.

48 Title of Court and Cause.

Decree of Divorce.

This cause came on regularly to be heard on the 14th day of January, 1901, upon the complaint of the plaintiff and the answer and supplemental answer of the defendant herein, and the respective parties being represented by counsel, and the court having filed its findings of fact and conclusions of law, from which it appears that all the material allegations of the complaint are sustained by the testimony, free from all legal exceptions, as to its competency, admissibility, and sufficiency, and all and singular the law and premises being by the court here understood and fully considered:

Wherefore, it is here ordered, adjudged, and decreed, and this does order, adjudge, and decree, that the marriage between the said plaintiff, George F. Harding, and the said defendant, Adelaide M. Harding, be dissolved, and the same is hereby dissolved, and the said parties are, and each of them is freed and absolutely released from the bonds of matrimony, and all the obligations thereof.

It is further ordered that the costs of this action be paid by the plaintiff.

Done in open court, this 31st day of January, 1901.

N. H. CONKLIN,
Judge of the Superior Court.

49 Endorsed: Filed Feb. 1st, 1901. Will H. Holcomb, clerk

Title of Court and Cause.

From minutes of court of April 1st, 1901.

Come the parties, the plaintiff by M. L. Ward, Esq., who moves the court that his name be associated as attorney for plaintiff upon the record.

Title of Court and Cause.

Bill of Exceptions.

Be it remembered that on the 16th day of January, 1901, this cause came on regularly for trial before the Hon. N. H. Conklin, judge of department two of said court, when the following proceedings were had therein, to-wit

WILLIAM H. BAILHACHE, a witness on behalf of the plaintiff, testified as follows:

Direct examination.

By Mr. PUTERBAUGH:

Q. State your name to the court.

Mr. WORKS: I object to introduction of any evidence in
50 this action upon the ground that the cause of action for divorce, if any there ever was, is barred by the provisions of subdivision 3 of section 124 of the Civil Code.

The COURT: The objection is overruled.

Mr. WORKS: We reserve an exception.

WITNESS: My name is William H. Bailhache. I reside in San Diego. I am about seventy years of age. I have resided here continuously since the summer of 1887. I was formerly a resident of Illinois, all my life pretty much was spent in Illinois. I have seen the plaintiff in the city of San Diego, State of California. In the summer of 1897, he lived with his sister, Mrs. Mary Snyder, at 1845 First street, this city. I saw him frequently during that summer. I had occasion to do so as I was doing business for Mrs. Snyder—getting ready to. I lived in the vicinity. I saw Mr. Harding in San Diego at various times before that date.

Cross-examination.

By Mr. WORKS:

My recollection is that I saw plaintiff in San Diego in the year 1896, and also in 1895. During the year 1897, I saw him here mostly through the summer and part of the fall.

51 Q. What time during the year 1896 did you see Mr. Harding here?

A. My recollection is indistinct; I could not tell.

Q. Can you remember any specific time, either by date or otherwise when you saw Mr. Harding here in 1896?

A. I cannot.

Q. Your are not certain then, are you, you saw him here in 1896?

A. I feel certain of it. I occupied a desk in the office of my son at the corner of Fifth and E streets, Strong, Arms & Company, and

he came there; came in there occasionally to inquire about prices and things and that is why I think so.

Q. Didn't you state just a moment ago you could not state any instance during the year 1896 at which you saw him?

A. I cannot fix the dates.

Q. I asked you if you could fix any such instance by date or otherwise?

A. I cannot. I had the desk room in the place I speak of the best part of the years 1895 and 1896.

Q. I wish you would state to me, if you can, how many times you ever saw the plaintiff in this action, Mr. George F. Harding, in the city of San Diego, prior to the 31st day of August, 1897.

A. Well, I was residing in the block just above Mr. Snyder's house, and he resided there, and I passed there two or three times a day and saw him more or less almost every—I would not say I saw him every day, but I saw him frequently, though I can-

52 not fix the number of times.

Q. Can you state whether or not it was less than a year or more than a year from the time you first saw him in San Diego until the time you last saw him here—I am not speaking about his present visit.

A. Probably two years, as near as I can get at it. I do not know how much of that time he was in San Diego. I think he was away from San Diego a considerable part of those two years. I don't know that as a matter of fact he was away from San Diego a considerable part of two years.

Q. Were there any considerable periods during that two years in which you did not see him in San Diego?

A. Yes. The place where he lived was Mrs. Snyder's residence, I understood it belonged to her, and the way I happened to know about it was that she was getting ready to go away; I was a neighbor and she asked me to look after her property while she was away; that is the way I fix the date. The plaintiff was not keeping an establisment of his own at that time; he was living with his sister.

By the COURT:

I lived in 1897 in the block adjoining that house three years. I lived at 1914 First street, about three years.

GEORGE F. HARDING, a witness on his own behalf testified as follows:

53 Direct examination.

By Mr. PUTERBAUGH:

My name is George F. Harding. I am the plaintiff in this case. I am acquainted with the defendant. She is my wife. We were married in Peoria, county of Peoria, State of Illinois, about 1855.

She has ever since been and is now my wife. On the 31st day of August, 1897, I resided in San Diego. I had resided in San Diego since May, 1895. I resided in the county of San Diego State of California, over three months immediately preceding the commencement of this action. I resided in the State of California over one year immediately preceding the commencement of this action. In the city of San Diego I lived at 1845 First street with my sister, who lived here fifteen years. Her name was Mary R. Snyder. She is my only sister. I rented the house of her under an agreement that she should live in it if she could, and take care of the house for me, being without a wife in fact, that is in—here; desiring to live here on account of my health I took a lease for it and paid her the rent for it from time to time, later negotiated for the purchase of the house and did purchase it; afterwards brought this suit August 31st, 1897.

Cross-examination.

By Mr. WORKS:

I was here in 1894, before I came here to reside, but made my arrangements and leased the property in 1895, on May
54 15th, I think, was the exact date. I was here before that, and after examining property, and trying to purchase property, I leased this property from her. I remained in San Diego continuously I should think some months at that time. It would be quite impossible to say how many months, but two or three months; I was here off and on; I crossed the plains during those years three or four times a year to get here. I was temporarily absent on account partly of health and partly this very severe litigation with Mrs. Harding and other litigation that I had that called me elsewhere.

Q. What is the longest time you remained in San Diego at any one stretch from May, 15th, 1895, to August 31st, 1897?

A. Hard for me to tell—say two or three months. Off and on in other parts of California—went to San Francisco, went with my sister to Santa Monica, passing along the coast for her health and mine.

Q. What is the longest period you were within the State continuously between the dates I have mentioned?

A. Well, I was—you define continuously now—I was in the State from time to time during these two years you know; two years and a half, thereabouts.

Q. I ask you how long you staid in the county continuously for any one time?

A. I have replied to it that I think two or three times I staid in the State for periods say of ninety days or therabouts.

55 Q. You are not sure of any greater length of time than that?

A. Well, no; because I was called away and returned and called

away and returned, making my residence here but having temporary calls elsewhere that were very imperative. I was called out of this State half a dozen times at least in that period.

Q. What is the longest period you were away from the State continuously at any one time?

A. I should think a month or two. The case was heard in January and February, 1897, and I was there then, and I think I was there in the fall of 1896 at hearings of this case, chiefly at hearings of the case you have before you; that took me chiefly; other things had some application, not much, otherwise I should have been here continuously.

Q. During the time from May 15th, 1895, to August 31st, 1897, Mr. Harding, I wish you would state to the court what business interests you had in San Diego?

A. I had a lease of the house at 1845 First strset; I had also negotiations for the purchase of several pieces of property here; you do not ask that, no—I wish to follow you—better confine this to the statement of the fact of that lease and my property here—

Q. (Repeated by reporter.)

A. I was not in business at all; I was trying to rest. I am now seventy and I thought it was about time I should retire. I came here to rest, and in regard to my health; yes, sir, came here
56 to rest. I left here after August 31st, 1897, within perhaps a month or two. I cannot exactly state how long I was gone that time, for my sister soon after became a non-resident of San Diego, and when she became a non-resident of San Diego, while I did not change my residence at all—I was gone perhaps sixty or ninety days, I cannot remember, Mr. Works, might as well answer that way; I am doing my best.

Q. You think you were not gone a longer period than sixty or ninety days?

A. I cannot remember, and cannot answer better than that. My recollection is I was back shortly afterwards, and that my sister changed her place of living in San Diego for some reason, and in November, 1897, he went to Denver, Colorado; I think I am not wrong as to the time, but up to the time that she was here I lived with her. Then I returned to San Diego, I think, I do not recall definitely what I did, but that would be my recollection. I answered it the best I could.

Q. How long a time did you remain in San Diego, or in the State of California, after your coming at that time?

A. The period was perhaps short that I was absent, but I was later—I am answering you the best I remember, I cannot remember in detail—I was afterwards a long time in California, out at Santa Monica.

Q. How long a time is it, to your best recollection, you were here that time, the time you came back after your first absence after the filing of this suit?

57 A. Perhaps a month, I cannot recall definitely. After that I think I went up into California with my sister, and went to San Francisco; that is my impression of the date, and thereafter—I was in the State at that time, I should say, several months, perhaps two months, we were a good while at San Francisco; I was some time at Santa Monica. I do not recall where I went then. I have been many places outside of the State of California since that time. I have traveled and been absent in Boston and New York and in Washington and many places; I have had calls, very important pieces of business in all places, and they were what called me there.

Q. I wish you would state, as near as you can, the length of time you were out of the State of California, after you had been here the period of two months you refer to in which you went to San Francisco and met these people you have mentioned?

A. After this suit was brought, you mean?

Q. Yes.

A. I cannot recall the length of time more definitely than I have stated. I cannot recall what I did then; it does not impress me; my sister very soon thereafter left San Diego, I think in November, 1897; that is my impression about it; if she left later I was with her later; if she left then—I cannot remember except that I was called away from California in the year and in 1898 at some periods and then came back again spending the winter in California, somewhere, sure. I was not always spending the winter here,

58 because of the change taking place in my sister's residence, but I never formed a residence anywhere else,—if you call it interpolating—I have always called myself a resident of San Diego, since the 15th of May, 1895, and so registered and written my deeds in that way, and never voted anywhere else.

Q. You have never voted here?

A. No, sir—never was here and voted here at all, but I refused to vote elsewhere and have never resided elsewhere.

Q. How great a proportion of the time or how much of the time since May 15th, 1895, and up to August 31st, 1896, did you spend in the residence at 2536 Indiana avenue, Chicago, at different times?

A. I cannot recall. I do not know; I was there occasionally; I do not know. I do not remember. I have had considerable business interests in Chicago, during all this time, very heavy. This case was pending and required a great deal of time; briefs in the supreme court; briefs in the appellate court, struggles over various questions connected with it. I have often been in Chicago since May 15th, 1895. Very frequently, more after 1897, than earlier, because matters were becoming more—continuously more dangerous for this estate and there has been more to do, more troubles. My business in Chicago being connected somewhat with getting loans elsewhere in Boston and New York. I haven't got through with

the rest that I came to California for yet. I trust to take more of it here.

59 Q. How long has it been since you were here the last time previous to your present visit?

A. Perhaps three months, I do not recall precisely; at the lowest, three or four months; I really cannot tell. I was at Santa Monica a long time and that was during last summer: that is, let me see—I will tell you with some exactness, it recurs to me now; I was in June and July in Santa Monica; I was here in August or September; that answers your question. I have been in Santa Monica more than once. I was at Santa Monica at two or three or four different periods; I have mentioned two now, one was in 1897, with my sister, a long time there, and I think one earlier, but I am not quite confident of that, and then I told you, I fixed the date; you asked me where I was this year; I told you I spent some time in Santa Monica this year, and some time here this year, a few days here and a few weeks there.

Q. What was it originally brought you to Calfornia, Mr. Harding?

A. Health and my only sister residing here fifteen years. I had visited my sister here before. I think once in 1894, once or twice. Never before that. I have never made any attempt to be registered as a voter here. I hold my residence still here, and never made a residence anywhere else. I am stopping at the Hotel Coronado now. I have been over there ever since I came this last time.

Q. Where have you stopped previously to this present visit
60 since your sister went away in the fall of 1897?

A. I have stopped at different hotels when I have been here since that time, the Brewster, and Coronado, whatever they were, I do not think I have stopped with any private party since then, but always with my sister before. I never have had any regular quarters since my sister went away. The house was occupied, and all that.

Q. Have you any business interests here now?

A. If I understand the words business interest—it is a peculiar term—I have not; in short you better ask me, it seems to me, if I had been in business here. I have not, and am not. I would like to add I have been retired from business for some years everywhere, excepting caring for my own property. I am not thinking of going into any new business enterprises now. I think I have got to the point where I ought to quit and hand it over to young men, and I have been at that point some years.

Q. I ask you to examine that newspaper article and state to whom it refers.

A. It cannot refer to me, because I am not a prominent Chicago real estate man.

Q. Do you see any name there that looks like yours?

A. Can't you read as well as I? George F. Harding; this occurs

to me to be a similar name. There are other people besides me of that name in Chicago.

Q. Did you notice a signed proposition at the bottom of that column?

61 A. Yes, I did.

Q. Is that a proposition made by you and signed by you?

A. No, it is a copy of some proposition touching the railways there which I did make. It is not a true copy, but it resembles it. I did make a proposition to the mayor and common council, to help save the streets of the city to the city. That was within—since I returned, after an absence of three or four months, within—well, January, I guess.

Q. I call your attention to the date at the head of this newspaper, January 10th, 1901.

A. I think that is right. That is about the time. That paper is not correct in many particulars, but I did make such a proposition, and I think it refers to me and to me alone, though the description does not fit me—being a prominent Chicago real estate man.

Q. I wish you would examine the portion of the article following these words "The following is the text of Mr. Harding's offer to purchase the lines," and state whether that is, as near as you can remember, a true copy of the proposition.

A. It is not, precisely as I have answered you long ago. I have read it and I have seen it before. It was sent me by somebody; I have seen that from some one—the Chicago American—yes.

Q. Is it true you offered the amount mentioned in that offer?

A. It is true I offered to take the property and make it pay for itself; the property is supposed to be worth fifteen or twenty

62 millions, and a mortgage on it will easily raise a million dollars; in that sense, and in that alone. These properties are street railways of Chicago that are worth many millions, and this was an effort on the part, as the newspaper says, on the part—on my part—to help the city back into the possession of its streets. I do not propose to advance a penny of my own money, nor any money that I—only for the purpose of getting the city into its possession of its streets; I represented a syndicate in that, a number of people.

Mr. WORKS: If the court please I will offer this proposition contained in the newspaper article in evidence, for the purpose of asking the witness what portions of it are incorrect, so we may get it correctly before the court. (Reading). The following is the text of Mr. Harding's offer to purchase the lines:

"To the mayor and common council of Chicago:

"I will give the city of Chicago one million dollars for the lines "of street railways in said city to which the city is entitled under "its contracts with the several street railway companies, the money "to be applied to the payment for said lines on the part of the city "under said contracts and the residue, if any to be paid into the

"city treasury. I will surrender the lines aforesaid to said city at
"any time upon the re-payment to me of the sums which I shall
"have incurred, less what I shall have received, for the use
63 "and occupation of said lines. I reserve the right to bond
"said lines and borrow upon them whatever may be neces-
"sary in the purchase or conduct of said lines, and to accept from
"the city in payment or give it credit for said bonded indebtedness
"whenever it, the city, shall exercise its option and re-take said lines.
"The fare upon said lines shall not exceed four cents a passenger,
"and shall be subject to be changed by the common council and
"fixed at any time at a sum reasonable and just for the carriage of
"passengers and in the interests of the city. If the lines upon ap-
"praisal, shall cost the city more than one million dollars, then I
"will consent to have the sum raised by the issue of bonds upon
"said lines in excess of said purchase price and in any event will
"provide for the payment of the amount of the appraisement to
"the street railway companies. My object is to secure the public
"property to the public; and I will make any modification neces-
"sary of this offer to advance the public interests and enable the
"public to regain control of its property. I will secure this offer
"and its performance by paying to the city one hundred thousand
"dollars and such other and further sums as may be necessary to
"remove or defeat real or captious objections. You will kindly
"note as the spirit, intention and letter of this proposition, that the
"chief objection heretofore urged to the exercise of the city's rights
"to purchase upon appraisal, namely, because the city is impotent
"and cannot increase its debt, is meant to be hereby re-
64 "moved; and the city at any time can enter into possession
"of its streets upon simply paying what it has cost to secure
"them from the present beneficiaries of their bounty, who have
"thereby grown enormously wealthy and have been in receipt of
"money which if in the city's treasury would have removed a bur-
"den off the back of every man in the city and enabled the city to
"hold its place as the most foremost city in the world.

"GEORGE F. HARDING."

Q. Mr. Harding, point out to the court what inaccuracies there are in that offer as I have read it.

A. I am unable to recall the terms of the offer, but find it impossible to state this is the offer. It is certainly wrong in several instances; I do not know to what extent beyond that.

Q. I would like to have you specify from memory, as well as you can, the inaccuracies in the published offer.

A. I do not think I am bound to do that; it is their paper; they must prove their paper their own way.

The COURT: I think it is proper. It refers to your residence there——

The WITNESS: It doesn't touch my residence—I am a citizen of

this city and reside here. but I have great interests in Chicago,
65 and I should like to lift a burden off the back of every inch of property in the city of Chicago. I might make the offer in Timbuctoo, or New York, the same thing; it has no bearing on my residence. I do not purport to reside there. It has no bearing.

The COURT: They think it has.

The WITNESS: I am answering the question. I cannot answer the question and state in what respects the offer differs; I can point out some respects in which it differs, but I do not pretend that that is all the difference. I certainly never proposed to pay any money into the city treasury. That has been added by somebody; there have been sundry other additions. It is a newspaper article; I cannot for my life tell you in what other respects by memory alone that it differs, but I think in one or two others it clearly differs—nor is it the whole of the article at all; it is not the whole of it as made. That is not the whole of the offer.

Q. Did you offer to purchase the street car lines in the city of Chicago?

A. No; I offered no such thing; that don't purport to be—if you want an explanation of it, it is this; the city of Chicago, in 1858, let its lines—let its streets to the street railways with the provision that the city could at any time take the property back by paying the money. Now that has been extended from time to time, and
66 it has been defeated, as to the city, because of its alleged impotency of so doing, and it is without the power, since the city, if it was claimed, had no power to purchase street railways. In order to bridge over that difficulty and prevent that consequence this is an effort to help the city to redeem its lines by using the railways themselves as the basis for borrowing money, not—on the railways, they to be the means of paying for the property. It contained a great deal more than that, it was quite different from that, the real proposition; I did not observe until the moment, that fact.

Q. Is it not a fact that you did offer to give the sum of one million dollars, or some other sum we will say, for these street car lines to which the city is entitled, and offer to hold the street car lines and operate them until the city, or as the city should repay you the amount of money you offered, together with other accruing costs, when you would convey the lines to the city?

A. No, it is not—it is a written offer, a very careful one, with additions to it that change that text entirely; I had forgotten until you showed me the second time—there is a great deal to be added to it.

Q. I wish you would state to the court in a few words the general tenor of the offer you made.

Mr. PUTERBAUGH: Objected to as incompetent, irrelevant and immaterial.

67 The COURT: The objection is sustained.

Mr. WORKS: We except to the ruling.

The WITNESS: I never proposed to operate the lines in the world, or advance any money at all. If the street railways can be made the basis of action a man without a dollar could make the proposition I did. This is not the proposition as it stands, you have got here,—not the one I made.

Re-direct examination.

By Mr. PUTERBAUGH:

My sister, Mrs. Snyder, died within a few days past. She died on the 11th of December, 1900. That is why I haven't her here as a witness.

GEORGE PUTERBAUGH, a witness for plaintiff, testified as follows:

Direct examination.

By Mr. JOHNSON PUTERBAUGH:

My name is George Puterbaugh. I am an attorney-at-law and reside in San Diego. I have lived here about fifteen years, possibly a little longer. I knew the plaintiff previous to my coming
68 to San Diego. I knew him in Illinois. My former residence before coming to San Diego was Peoria, Illinois, and Mr. Harding formerly lived there, but moved over to Chicago, but by reason of my residence there I knew him as a boy, or young man, by general reputation, and from some time prior to 1870 I have known him personally, practising law in Chicago, where I frequently went on professional business. I cannot say when I first saw Mr. Harding in San Diego, but I saw him here some weeks at least prior to the middle of June, 1895; I am inclined to think I saw him in the city of San Diego something over a year prior to that time, but I am not quite positive about that, but I do know I saw him here some weeks prior to the middle of June, 1895. I have seen him here several times since then and conversed with him many times. I knew Mr. Harding's sister, Mrs. Snyder, and had known her for some considerable time prior to June, 1895, but I did not know until some weeks before the middle of June, 1895, that she was a sister of Mr. Harding. I had known the lady here in San Diego, however, before that time.

Q. Did you learn from him at that time he had come here to reside? What was said on that subject?

A. Mrs. Snyder, Mr. Harding and I were some weeks prior to about the middle of June 1895, talking about California in general, and I was very enthusiastic over San Diego, in particular as a resi-
69 dence city, and I said to Mr. Harding, "You ought to come here to live, and rest." His sister spoke up and said, "He is living here," and Mr. Harding said, "Yes, I am living here, and living with my sister," and mentioned the place where they

lived. I knew where Mrs. Snyder lived, and we talked about it in that line, and he expressed himself how he liked it, and hoped when he got over his business worries—so he could remain here and increase his longevity. I had conversation with Mr. Harding in relation to the purchase of property here, at least twice, and have talked over what I thought would be the most desirable places for him to establish his home for his old age, and gave him my reasons for it, and have made investigations about properties, I believe, both occasions for him, and told him the results.

Cross-examination.

By Mr. WORKS:

Q. Why is it you are able to fix with such particularity the time at which you first saw Mr. Harding in San Diego, and why do you fix it at some weeks prior to the middle of June, 1895?

A. In 1895, I was one of the judges of the superior court of this county, and about the middle of June a case was on trial before me in which Mrs. Snyder was a witness, and the moment she came into the courtroom why I thought of her in connection with Mr. Harding, and, I knew that I had never known her as Mr. Harding's sister until I met her with him, and this trial came off about—I
70 thing it was the 12th of June, I may not be exact about the day, but I know it was just before that trial some weeks, that I had this first conversation with him. I saw him a great many times during that visit, a great many times with his sister, and I think with a daughter of his sister; sometimes saw them all three together along about that time before and after the middle of June.

Q. How great a time elapsed between the first time you saw Mr. Harding and the last time you saw him?

A. I am not entirely sure just how long it was that I saw Mr. Harding in San Diego the first time, but I should think it was some time about a year prior to that time that I had seen him; that is the way it impresses me now, about a year prior.

Q. About a year prior to this time, a few weeks before the middle of June, 1895?

A. Yes, my best recollection is about a year before this time that he commenced living here, that I had seen him here.

Q. How long did you see him here after that time a little prior to June, 1895?

A. During that summer I saw Mr. Harding quite frequently. I couldn't say though whether it was ten times or thirty.

Q. What is your best recollection as to the length of time he was in San Diego at that time and you were seeing him?

A. I think, my recollection is he was here quite an ex-
71 tended time; I should think he might have been here any where from two to four months; he might not have been here two months, I think that long, may be considerably longer

than four months for all I know. I met Mr. Harding and talked about old times and old acquaintances frequently.

Q. How long was he gone after he left then—you say you saw him you think anywhere from two to four months and possibly longer?

A. Yes, Mr. Harding has come and gone. I don't know just exactly how long he was away after that. I remember of seeing him again after a time when I didn't see him, in the course of a few months, three or four or five months; I could not make it more definite than that. My recollection is that prior to the time of filing this complaint I saw him here at least twice, or may be more, besides that time, after he left in the summer of 1895. I feel sure I did see him at least twice; I may have seen him oftener. My recollection is I have seen him many more times than twice; I am not able to say he did not go away in the *interim;* if I saw Mr. Harding one week and then not see him for four or five, he might have been away in the *interim.* I saw him more frequently the first time he was here than at any subsequent time. Take the whole summer together I did not see him a great deal more frequently.

Q. How long a time was he here to your own certain knowledge immediately prior to the filing of this complaint?

72 A. He was here and went with Mrs. Levet and her mother to Catalina, and then came back again, and I could not tell you how long a time intervened, but some weeks, or two or three months, something like that.

Q. You state that at one time when you were talking with Mrs. Snyder and Mr. Harding she said that he was in fact living here?

A. Yes; she says, "Why, he is living here now." I think that was about the first expression. That was my first meeting with him with Mrs. Snyder. I had seen Mr. Harding, but not with Mrs. Snyder, and that is the first the question of his living here was spoken to me. He had never mentioned it to me before our conversation.

Q. Did he say in connection with that remark as to how long he had been living here, or how long he intended to remain here, or was it the general expression, "he is living here now"?

A. That he was living here and intended to make it his permanent home; that is the impression I got. I said he ought to come here and live; it was a good place for him to rest, or words to that effect, and she says, "He is living here now." Then she went on and talked, and he spoke up and said he was living here and how he liked it, and we talked about the thing for quite a while—spoke of where they were living and I said—I volunteered my advice where I thought they ought to live.

The following stipulation between the parties was then read to the court:

73 Title of Court and Cause.

"It is stipulated that the printed abstract of the record in the case "of Adelaide M. Harding *vs.* G. F. Harding, circuit court, Cook Co., "Illinois, prepared for appeal by appellant in appellate and supreme "courts, may be used by either party in lieu of the certified copy of "record to save costs. So much of the additional abstract prepared "by appellee as was held to be and allowed as an abstract may also "be used.

"This shall in no wise be a waiver of the right of the defendant "to recover for the cost of the certified copy of record already "named said to be $65,00.

"VICTOR M. HARDING.
"GEO. F. HARDING.

"PUTERBAUGH & PUTERBAUGH,
"*Att'ys for Plaintiff.*
"WORKS & WORKS,
"*Att'ys for Def't.*"

The following stipulation between the parties was then read to the court:—

Title of Court and Cause.

"It is hereby stipulated, by and between the respective parties "hereto, that during the trial hereof, any portion of the testimony of
"the witnesses in the case of Adelaide M. Harding *vs.*
74 "George F. Harding, begun in the circuit court of Cook
"county in the State of Illinois, as such testimony is set forth "in the printed abstract of the record for appeal by the said George. "F. Harding, appellant in said action, in the appellate and supreme "courts of said State, may be read in evidence as fully and with the "same effect as though the witness whose testimony is read were "present in this court.

"This stipulation is intended to obviate the objection that any "witness whose testimony it is desired to introduce is not present in "court, but the testimony of such witnesses, when read, shall be "liable to all other legal objections except as to the form of ques- "tions and answers.

"Either party has the right under this stipulation to introduce "any portion of said printed abstract.

"PUTERBAUGH & PUTERBAUGH,
Attorneys for Plaintiff.
"WORKS & WORKS,
Attorneys for Defendant.

"January 17, 1901."

The COURT: Is the understanding of the terms of the stipulation that it is not to go to the competency of the testimony?

75 Mr. WORKS: Not to go to the competency of the testimony in so far as the witness not being present is concerned.

The COURT: That is the point, exactly.

Mr. WORKS: There are other objections of competency that we might want to urge; I say it is subject to all other legal objections.

The COURT: My understanding is that you waive all objections to the competency of the testimony as introduced here, the manner of its introduction, I mean, not as to its form of substance, but as to the manner of the introduction.

Mr. WORKS: Certainly.

Mr. PUTERBAUGH: I think we want the court especially to agree with us.

The COURT: I understand it that they have stipulated there is to be no objection as to the using of these depositions here because they are depositions taken in another case.

76 Mr. WORKS: That is the point, exactly. We agree to that.

Mr. PUTERBAUGH: Shall we proceed now?

The COURT: You may proceed, sir.

(What here follows is a part of the Illinois record and was introduced under the two stipulations hereinbefore set forth.)

BEATRICE HARDING, a witness in behalf of plaintiff, testified as follows:

Direct examination:

My name is Beatrice Harding; I am nineteen years old; I make my home with my father, the plaintiff in this case, at 2536 Indiana avenue.

Q. Who else are members of the family at that place?

A. My father and my brother, George.

Q. Who other than you three are occupants of the place?

A. And two servants, that is all.

Q. One of them being the cook?

A. Yes, sir; and one second girl.

* * * * * * *

77 Mr. PUTERBAUGH: I offer the deposition of—

G. T. VAN METER, on behalf of the plaintiff, who testified as follows:

78–79 (This is a part of the Illinois record, and was offered under the two stipulations hereinbefore set forth.)

* * * * * * *

80 (Here follows part of Illinois record offered under said stipulations.)

ABNER C. HARDING, a witness on behalf of plaintiff, testified as follows:

* * * * * * *

81 (Here follows part of Illinois record offered under said stipulation.)

AMELIA NEIDERLAND, a witness on behalf of plaintiff, testified as follows:

82 * * * * * * *

Plaintiff then offered in evidence the following portion
83–85 of the record in the Illinois case, under the stipulation:—

GEORGE F. HARDING, JR., a witness for the plaintiff, testified:

* * * * * * *

86–91 Plaintiff offered in evidence the following portion of the record in the Illinois case, under the stipulation:

BEATRICE HARDING, a witness in behalf of plaintiff, testified as follows:

* * * * * * *

92 GEORGE F. HARDING, the plaintiff, recalled in his own behalf, testified:

Direct examination.

By Mr. PUTERBAUGH:

February 1st, 1890, I was living at 2536 Indiana avenue, Chicago, Illinois. I had lived there since 1872. The defendant had lived
with me there during all that time except when she was
93 abroad. The defendant ceased to live with me on February 1st, 1890. I did not know she was going away. She has never returned to live with me since that time. I have requested her to return. On the 5th day of February, 1890, I requested her and she refused to return.

Q. What reason, if any, did she give you for leaving you?

A. None. She said "I have made one mistake, and I will not make another," was her language. That was at the time she was in my house and I requested her to remain, to return. I invited her—she was passing on the street with her two children, having just returned from the country, and I invited her to return to the house and become—and remain there. The children cried. She declined. That was on the 5th of February. When she left I did not know why she left.

Cross-examination.

By Mr. WORKS:

Q. Do I understand you to say, in response to a question by Judge Puterbaugh, that you did not know why your wife left you?

A. Yes. We did not have a conversation on the subject of her proposed leaving before she left, to my recollection. I didn't have a conversation with her in which she gave reasons why she should no longer remain in my house.

Q. Nor why she was dissatisfied with being in your house, or dissatisfied with you?

94 A. How to answer that in a word is difficult. I knew that she had causes as she thought, of complaint, of that sort, but that she intended leaving, or that was the cause of her leaving, I did not know, if that is an answer. She never told me she intended to leave. Never heard of it till she did leave.

Q. Then all you mean by saying you did not know she was going to leave is that she hadn't told you she was going to leave?

A. I mean to say all I have said, which is more than that. I do not think she had good cause to leave on her own statement, but she had causes as she alleged of complaint which were denied by me.

Q. Is it not true that some months prior to her leaving, you did not leave her bed and sleep in another part of the house?

A. No. I always slept in another part of the house, or nearly always. We had different rooms.

Q. When was the last time you occupied the same room before her leaving?

A. October, 1888, or rather she occupied mine.

Q. Not after October, 1888, did you occupy the same bed?

A. She came to my room in October, 1888, and occupied that room with me; that is my recollection. That was the front room in the house.

Q. It had always been your custom prior to that time to occupy the same bed or sleep in different rooms?

95 A. Always different rooms, or nearly always; that is, for some years.

Q. Except occasionally?

A. Yes, the children—one child slept with her.

Q. Then you did not occupy the same bed after October, 1888, up to the time she left?

A. I never occupied the same bed in any other sense than I tell you, and on that occasion. No, we never occupied the same bed again. Not once.

By consent Mr. Puterbaugh here questioned the witness further on direct examination.

By Mr. PUTERBAUGH:

Q. You may look at the letter contained in the abstract of record

of the Illinois case and state whether or not that is the letter you referred to in your direct examination?

A. Yes, sir; I wrote her that letter on February 5th, 1890.

Mr. PUTERBAUGH (reading):

Office of George F. Harding, 170 Madison street, room 51.

CHICAGO, *February 5th*, 1890.

Mrs. Adelaide M. Harding, general delivery, postoffice, city.

MY DEAR WIFE: I write you this note to request you to
96 return at once to my house with the children. I have always tried to do my whole duty as your husband, and am sorry for whatever mistakes there may have been on my part. I have no fear as to the result of the suit which you have brought against me, but I am confident that it will be held that you have left my house solely without excuse, and that separate maintenance will be denied you, and my children left entirely in my custody. I speak of this suit so that you may know that it is not on account of it that I request your return; but make this request to assure you that I sincerely desire to furnish you with a good home and comfortable and ample support, and further because I especially wish that the children may have the benefit of our mutual love and care. I do not desire that any of our children shall think ill of you if it can be avoided. I have always tried to merit your confidence and sincerely regret that our mutual confidence has been shaken. I will do all in my power to restore it fully again. I think we ought to make concessions and sacrifices, not only for each other's comfort, but also in order to give our children a home and the opportunities and advantages to which they are entitled. If there are any obstacles to your return home at once, I am willing to do what I can to remove the same. Until your suit was brought and the summons served upon me on Monday morning, I was not aware that you had in fact left the house not to return. So far as I knew, you were absent upon
a visit to the country, which I understood from Victor you
97 designed to take. I do not know now where you are—nor where the children are, and have therefore to send this note to your general address, believing that you have made arrangements to have the letters delivered to you under the address which you have given to the post office, and I therefore registered this letter to insure your getting it, and to insure to myself the knowledge that you have received it.

Very truly and affectionately your husband,

GEORGE F. HARDING.

WITNESS: I desire to correct a statement or statements in my testimony as to the time when I was in San Diego and when I was in San Francisco, I think, and when I was in Chicago, before and after the beginning of this suit. Instead of months, I think it must be

reduced to weeks; I do not know precisely, and have not had read to me the statements, but I find that, on looking at some memoranda, I must have been gone from Chicago on that occasion about six weeks, as I interpret it, instead of a longer period. I was hurried home on account of the very heavy litigation in this case; the attachment issued during that period.

Cross-examination (resumed.)

By Mr. WORKS:

98–108 Q. What is your memory in reference to the length of time you were in California, the longest at any time, since 1895, or up to the beginning of this action?

A. I would not be able to say which was the longest, but I mentioned several periods that were long. I think ninety days was the longest period I was here at any one time. It may have been longer, but I would not make it any wider than that.

Q. When I say here, I mean in the State of California.

A. Well, I am in doubt about Santa Monica; I was there a good while at the sea shore.

Q. According to your best recollection, you were not in the State of California longer than ninety days at one time?

A. I think that would be a fair statement; at the same time, I have not so definite a recollection as to be able to say that was entirely true; that that limited the time—I might have been longer here at different periods.

Q. Mr. Harding, I judge from this letter which has been introduced in evidence here that you and your wife had been having some difficulty prior to the time she left the house, February 1st, 1890?

A. Yes, I should think you might call it difficulty; there were difficulties, yes. Her differences began for the first time in October, 1888, let us say about the fifth or tenth of October—say the fifth, and they lasted, with intervals of adjustment, up to the time she left the house.

* * * * * * *

109 Q. When did you first become aware of the fact that your wife had left you for good?

A. I should think I would be inclined to infer that from
110 filing such a bill. That is the first knowledge I had of why she left or whether she left, and I think there was a period of uncertainty there that I was under, until she was in front of my house passing with her two children, I think, to see a neighbor, and I invited her in, and then when she declined to return of course I—that it would be permanent, I did not know—you observe in my answer under oath in March, 1890, I invited her back and could not know that she did not intend to return. On the 5th day of February, she passed the house, and came in with her two children

at my invitation. I first saw a copy of this bill that was filed, probably on the morning that the bill was printed—I was astounded—in the Chicago papers—to see it, printed full length. It was printed in full. I read it. I cannot tell what day's paper it was in.

Q. Was it prior to the 5th at the time you had this conversation with her?

A. I think it was. Oh, yes; I think so. Yes, it was prior to that, that is my recollection, prior; it may have been on that morning, or may have been on the morning of the third. I am inclined to think it was on the very morning when it first appeared—or in the evening paper, wouldn't it be—or perhaps the next morning, it would be naturally—I am now guessing. It was either on the 3rd, 4th, or 5th. It was before I had this conversation with her, at any rate. That reading of that bill did not acquaint me with the fact she had left my home for good. I did not realize from the
111 filing of this bill she had left me finally. I thought she—I thought—that was my interpretation of it for some little time—I was astounded, as you would be, if struck by lightning, a good deal.

Mr PUTERBAUGH: I desire to offer, in connection with the plaintiff's testimony a portion of his sworn answer appearing on page 39 of this record as follows:

"Defendant further answering, says, that complainant has left "the home of defendant, and is now living separate and apart from "him, without excuse therefor, and wholly of her own fault, and "without the fault of defendant; and defendant upon learning of such "abandonment and desertion by complainant immediately sent re-"peated and urgent invitations to complainant to return to his "house, and has persisted almost to the time of the filing of this an-"swer herein, in earnest efforts to adjust, if possible, the differences "between complainant and this defendant, and to that end has used "every honorable means and resource at his command, out of his "own self-respect, and from love of his children, and from a desire, "at this late period of life, to avoid the disgrace and scandal of this "litigation. And from these same motives, notwithstanding the "misconduct of complainant, the defendant has all the time desired "and requested, and still desires and requests that she return to "his home, and take and retain her place there as his wife, and as
"the mother of his children, in which event defendant will do
112 "all in his power to fill the remaining days of her life with
"happiness and peace."

Plaintiff here rested.

Mr. WORKS: Judge Puterbaugh, I suppose you will admit that in the case of Harding *vs.* Harding, No. 79,020, in the circuit court in and for Cook county, in the State of Illinois, the Adelaide M. Harding, who is defendant in this action was complainant, and that George F. Harding who in this action is plaintiff, was defendant.

In other words, that the plaintiff and defendant in this action were parties to that action are the same ones who were parties to that action and there were no other parties to that action.

Mr. PUTERBAUGH: Yes. That the plaintiff in this action was the defendant in that action, and the defendant in this action here in California was the complainant in that action.

The COURT: I understand it.

Mr. WORKS: I offer in evidence a certified copy of the record in the circuit court of Cook *county, Illinois, in this* action concerning which we have been stipulating, the case of Adelaide M. Harding *vs.* George F. Harding. I will offer it in evidence and ask to
113 have it marked as Defendant's Exhibit "A." It is as follows:

UNITED STATES OF AMERICA:

STATE OF ILLINOIS, } *ss:*
County of Cook, }

Pleas before the Honorable Richard W. Clifford, one of the judges of the circuit court of Cook county, at a term thereof begun and held in the court house at Chicago, in said county and State, on the third Monday (being the 20th day) of November, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the United States the one hundred and twenty-fourth.

Present, Honorable Richard W. Clifford, one of the judges of the circuit court of Cook county, State of Illinois.

Chas. S. Denem, State's attorney.

Ernest J. Magerstradt, sheriff.

Attest: JOHN A. COOKE, *Clerk.*

B- it remembered that heretofore, to-wit, on the 3rd day of February, A. D. 1890, a certain bill of complaint was filed in the office of the clerk of said court, in words and figures following to-wit:

114 STATE OF ILLINOIS, } *ss:*
County of Cook, }

Circuit Court.

To the honorable judges of the circuit court of Cook county, Illinois, in chancery sitting:

Your oratrix, Adelaide M. Harding, humbly complaining, showeth unto your honors that on the 7th day of November, 1855, at Peoria, Illinois, she was married to George F. Harding, defendant herein, that she resided with her husband at Peoria until 1861, when they went to Europe to spend a year, that upon their return from Europe

in 1862 they came to reside in Chicago, in said Cook county, and have ever since resided and still do reside in said last named city.

That as the fruit of said marriage there have been born to your oratrix and her husband seven children who are all living and whose names and ages are as follows: Abner Clark Harding, aged thirty-one years on December 31st, 1889; Victor M. Harding, aged twenty-three years on April 25th, 1889; George F. Harding, Jr., aged twenty-one years on August 16th, 1889; Adelaide Harding, aged nineteen years on September 5th, 1889; Beatrice Harding, aged sixteen years on August 20th, 1889; Susan Grace Harding, aged fifteen years on December 10th, 1889; and Madeline Harding, aged eleven years on November 18th, 1889.

115 The said Abner Clark Harding is now married and lives away from his parents, though in the said city of Chicago; the others of said children have always lived with their parents, except as hereinafter stated.

Your oratrix, further complaining, shows unto your honors that during the whole period of her married life she has conducted herself towards her husband and children as a true, loving, faithful and devoted wife and mother, that she has at all times and in all things made the comfort and happiness of her husband and the education and welfare of her children the paramonnt concern of her life and has devoted herself always and unreservedly and almost exclusively to the duties connected with her family and her home.

That upon the death of his father, which occurred July 19, 1873, the defendant inherited a large fortune and since that time he has been a man of large wealth, amounting to a million dollars or more and has been in receipt of a large and certain income, which matters will be more fully referred to hereafter.

That since the year 1872, they have lived at number 2536 Indiana avenue, which is a large and commodious house owned by the defendant and situated in one of the best residence localities in said city of Chicago.

That until recent years, your oratrix and her husband
116 lived happily together, he treating your oratrix with kindness, affection and consideration, and giving your oratrix his companionship and love; that until the month of October, 1888, he always provided liberally for the support and comfort of your oratrix and accorded to her that position and authority in the household to which she was entitled as wife and mother; that for a great many years they have had in the way of servants, a coachman, a woman two days in the week to wash and iron, a cook, a second girl, a nurse or housekeeper and a woman to sew as occasion required, all of whom, except the coachman, have been at all times under the control and management of your oratrix; that her said husband has also for a great many years kept in the stable in the rear of their dwelling not less than five or six horses and a variety of fine and expensive carriages and vehicles, all of which were at all times until October, 1888, at the command and service of your

oratrix and almost for her exclusive use, her said husband making very little use of the carriage except when going out with your oratrix.

That until October, 1888, your oratrix had credit at some of the principal dry goods and other stores of Chicago dealing in household supplies, and was accustomed to obtain at such stores upon the credit of her said husband whatever she required for the house or for clothing for herself and children.

That until about the year 1880, your oratrix's said husband kept his father's residence in Monmouth, Illinois, as a summer
117 home for his family, and they were accustomed to spend their summers there except when traveling abroad. After about the year 1880 they were accustomed to spend their summers at some place on the Atlantic sea board, and this practice was continued until the year 1888 inclusive, except when they were in Europe, and except the year 1887, which was the only summer spent in Chicago prior to 1889.

That on four different occasions the defendant took your oratrix and children to Europe, remaining from several months to a year or more each time and giving them the pleasure and advantages of foreign residence and travel.

Your oratrix, further complaining, shows unto your honors that the foregoing particulars will suffice to show the style and manner in which your oratrix had been accustomed to live and be supported by her said husband prior to October, 1888, all of which was far within the means of said defendant as will hereafter appear; that your oratrix cannot state the exact amount of expense which the defendant incurred on account of his home and family, but according to the best information and belief of your oratrix it has not been less than fifteen thousand dollars a year for several years preceding the last mentioned date.

That in October, 1888, said defendant began towards your oratrix a systematic course of unkind, abusive and cruel treatment, which necessarily and inevitably rendered your oratrix's life unhappy and miserable, and which he continued with increasing severity
118 and cruelty until the first day of February, 1890, when in consequence of such treatment and after exhausting all means of reconciliation she left the defendant's house and has ever since lived separate and apart from him.

Your oratrix, further complaining, showeth unto your honors that during all their married life until about the middle of October, 1888, your oratrix and said defendant had been accustomed to occupy the same room and bed; that about the time last mentioned said defendant without any cause whatever left the room and bed they had jointly occupied, and has ever since occupied a separate room and bed from that occupied by your oratrix, and has ever since refused to live and cohabit with your oratrix and his wife; that at about the same time the defendant forbid all the merchants with whom she had been accustomed to trade upon credit, as above related, to

give your oratrix any further credit whatever and told them that he would pay no bills contracted by your oratrix, and at the same time upon the pretense of desiring to buy for cash instead of upon credit proposed to provide your oratrix with the sum of fifty dollars a month in lieu of the credit she had been accustomed to have as aforesaid. But your oratrix states that said defendant only furnished said sum of fifty dollars a month until February, 1889, since which time he has given your oratrix only the sum of one hundred dollars, and that the money so provided amounted since Oc-
119 tober, 1888, to about the sum of three hundred and fifty dollars, has been altogether inadequate to provide for the personal expenses of your oratrix in the manner in which she has been accustomed to live.

That since about the middle of October, 1888, said defendant has deprived your oratrix of the use of the horses and carriages and your oratrix has not had the use thereof except on a few special occasions and by special permission of the defendant; that the defendant has from time to time pretended to allow your oratrix to have the use of a carriage on certain days of the week and for a limited number of hours at a time, but has at the same time made such limited use of the carriage dependent upon the convenience and dictation of the coachman and has instructed or encouraged the coachman to be insulting and dictatorial towards your oratrix and has compelled your oratrix to submit to such insults and dictation. The said coachman has been permitted to fix the hours when your oratrix should go or return and even decide whether your oratrix should go at all, and one occasion, while your oratrix was calling at the house of a friend the coachman drove away and left your oratrix to return on foot. Your oratrix complained to defendant of such treatment on the part of the coachman, but such complaints were never followed by any change in his conduct toward your oratrix and so any attempt to use the carriage became the source of more annoyance and humiliation to your oratrix than to go without it.

120 Your oratrix, further complaining, says that for many years she has had the control and use of an iron safe in the house where she lived which locked with a combination lock, the combination to which was known only to your oratrix; that in this safe your oratrix was accustomed to keep her jewelry, various personal papers and correspondence, and also valuables belonging to the house; that about October 13, 1888, said defendant broke open said safe and took therefrom all the jewelry and papers of your oratrix contained therein; that he retained the said jewelry to the annoyance and discomfort of your oratrix until October 1889, and then returned it your oratrix by one of their sons and that he still retains, or at least has not returned to your oratrix, the papers and documents taken from said safe.

That since October, 1888, the said defendant has withdrawn himself entirely from the society and companionship of your oratrix and

has treated your oratrix with studied neglect and indifference. He has seldom within that time taken a meal with the family, and spends the time when at home mostly in the privacy of his own room. He avoids meeting your oratrix and as far as possible ignores her. He never speaks to your oratrix except to request some favor from your oratrix which he cannot otherwise obtain, such as the signature of your oratrix to a deed or mortgage or for the purpose of loading your oratrix with abuse. He has re-
121 peatedly since October, 1888, in the presence of their children denounced your oratrix as a thief and a liar, and has berated your oratrix with violent and abusive language. He has repeatedly stated that he would free his property from any claim of your oratrix and that your oratrix should never have another cent of his money.

That said defendant has endeavored by a system of rewards and punishments and threats of disinheritance to persuade or force their children to take sides against your oratrix, and to join and uphold defendant in his unkind and abusive treatment of your oratrix. He has rewarded those of the children who have put slights upon your oratrix and upheld them in unkind, annoying and abusive treatment of your oratrix, and has punished those who have refused to join in such treatment and have given your oratrix sympathy and support, by withholding money from them and denying them proper clothing and the means of pleasure to which they have been accustomed.

In July last, the said defendant turned his eldest daughter out of doors for no other reason than her adherence to your oratrix and her refusal to become a tool of the said defendant in the persecution of your oratrix, and compelled the said daughter without money or credit to depend, for the time being, upon the kindness of friends for the necessaries of life, and although the said defendant requested said daughter's return in October, yet he drove her forth again for the same cause a month later with blows and violence and abu-
122 sive language, and has forbidden her return to the house from that time to the present.

That said defendant by every means in his power, has endeavored to alienate the children from your oratrix. That said defendant's conduct with respect to the children has been pursued for the purpose of wounding and crushing your oratrix through her love for them, and has been the cause of great pain and misery to your oratrix as well as of great injury and unhappiness to the said children.

Your oratrix, further complaining, says that said defendant during the year prior to November, 1889, repeatedly threatened to discharge all the servants and command them to take their orders and directions from him, the said defendant, and to disregard the orders and directions of your oratrix and as far as possible incited them to be insubordinate and disrespectful and insulting to your oratrix — as far as possible deprived your oratrix of that position of authority and

control in the household to which she was entitled. That about the middle of November last, said defendant, putting into execution the threats so frequently made before, did discharge and send away all the servants, except the coachman who was retained for the said defendant's accommodation only, and except the woman to wash and iron who has been permitted to come two days in the week, as formerly. That in consequence of such discharge of the servants your oratrix, though wholly unused to such exertion,
123 was compelled as far as possible to perform the labor and drudgery about the house for which three servants had theretofore been employed and deemed necessary. That your oratrix was thus compelled to and did cook and clean, build fires and carry coal and perform whatever menial service was necessary to be done about the house so far as she was able. That the unusual exposure, exertion and lifting brought upon your oratrix an attack of lumbago followed by influenza and other complications, and your oratrix became seriously and painfully sick and confined to her bed and under the care of her family physician for the space of about two weeks; that during this time said defendant never came near your oratrix, and told the children that your oratrix was shamming, and found fault with certain of the children for taking care of your oratrix while she was thus prostrated with sickness.

Your oratrix, further complaining, says that at the same time that said defendant discharged the servants as aforesaid, he also forbid your oratrix to purchase supplies for the table on credit, and forbid the dealers in such supplies with whom they had been accustomed for years to trade, to furnish anything on credit, or on the orders of your oratrix, and left the procuring of such supplies wholly to their said daughter, Beatrice, to whom he has supplied money for the purpose, but in what amounts your oratrix cannot state, and has
124 compelled your oratrix to make requests for such supplies to said Beatrice, who sometimes fulfills them and sometimes neglects or forgets to do so, being very busy with her school work and not accustomed to any responsibility of any kind; that in consequence your oratrix has often been without necessary supplies for herself and the family, and your oratrix, with such of the family as took their meals at home, was obliged to subsist upon insufficient food; that on one occasion, in consequence of the neglect of said Beatrice to purchase a list of supplies requested of her, your oratrix and suchof the children as were at home had to live from Saturday evening until Monday evening upon what could be made from corn meal and flour. That said defendant usually takes his meals at the clubs to which he belongs and so is not concerned with what the family have at home.

Your oratrix, further complaining, says that in many other ways and particulars than as above set forth, the said defendant has wronged, abused and mistreated your oratrix, and contributed to render her life in the house with him miserable and unendurable; that being advised that any further recital of such treatment is un-

necessary and would tend to undue prolixity, your oratrix omits the same but craves leave to make proof thereof as if set forth at length, and also to insert the same, or any part thereof, by amendment, should it at any time become necessary or advisable to do so.

125 Your oratrix, further complaining, says that the treatment to which she has been subjected, as aforesaid, by the said defendant, has impaired the health and threatened the life of your oratrix; that she was advised by her family physician at the time she was sick, as aforesaid, that such sickness was caused by her unusual exposure and exertion in doing the work and drudgery of the house, and that a return to and continuance of the same exposure and exertion would be likely to be followed by further and more dangerous prostrations; that said treatment of your oratrix by the said defendant has destroyed the happiness of your oratrix and has necessarily rendered her life in the same house with him miserable and unendurable.

Your oratrix, further complaining, says that she has ever been a loving, faithful and devoted wife to the said defendant; that she has never given the said defendant ground or occasion for his unkind and cruel treatment of her, as aforesaid, and that said defendant's conduct is without provocation, excuse or defense.

Your oratrix, further complaining, says that during the past year she has repeatedly tried to bring about a reconciliation between herself and the said defendant, but all her efforts have proved unavailing; that the defendant's conduct towards your oratrix has grown continually more cruel, humiliating and unjust, and finally on the third day of February, 1890, your oratrix having endured the defendant's said treatment for more than a year, and de-

126 spairing of any amelioration in his conduct, withdrew from his house and ever since has been and still is living separate and apart from the said defendant without fault on her part.

Your oratrix, further complaining, shows unto your honors that during her long life with the defendant she has come to know much about his property and income, and she states upon information and belief, her information being derived principally from the defendant himself and from those who have charge of his property as his agents, or been connected with his office, that the defendant owns property in Chicago as follows: The premises number 170 East Madison street; the premises number 155 and 157 East Washington street; one-half of the Mentone block, situated on the corner of Erie and Dearborn streets; more than one hundred dwelling houses situated in different parts of said city, but mostly in what is known as the South Side; also other real estate of considerable value which your oratrix cannot more particularly specify; that said defendant owns more than eighty improved farms situated in different parts of Illinois and embracing some of the most valuable farming lands in the State, said farms being located principally in the counties of Warren, Mercer, Henderson, Iroquois and Peoria; that said defend-

ant also owns a valuable farm at Racine, Wisconsin; a tract of land of the value of about $50,000, at Geneva Lake, Wisconsin, the title to which is in the name of John Johnson, Jr.; that said de-
127 fendant also owns wild or unimproved lands at various points in Illinois, Wisconsin and Iowa; that said defendant also owns nearly all the stock of the Firemen's Insurance Company of Chicago, and that his interest in said company is of the value of $150,000 to $200,000; that defendant has other personal property which your oratrix is unable to describe.

Your oratrix further states that she has no means of giving an accurate or legal description of the defendant's real estate, and craves leave to insert the same by amendment if such course shall be deemed necessary or advisable.

Your oratrix further states, on like information and belief, that said defendant is worth over and above all his debts and liabilities from two to three millions of dollars; that his gross income exceeds the sum of one hundred and twenty thousand dollars a year, and that his net income is not less than from seventy-five to one hundred thousand dollars per annum.

Your oratrix, further complaining, shows unto your honors that said defendant has not within the last two years, met with any serious financial losses or reverses, but that during the past few years the defendant has steadily and materially added to the amount and value of his property, and during the same period the aggregate amount of his income has increased from year to year, and that said defendant has never been in a position in which he was better able, than since October, 1888, to provide liberally for the support and maintenance of his wife and family.

128 Your oratrix, further complaining, says that the children, Susan and Madeline, prefer to live with your oratrix; that they are still of tender age and require a mother's care and direction; that defendant has of late years given but little of his companionship to his daughters; that the defendant is unable to give to the said children that constant care, counsel, direction and oversight which young girls growing into womanhood require, and that the best interests of said children will be conserved by placing them in the custody of your oratrix; that as to their daughter, Beatrice, she ir now sixteen and one-half years of age, and should be allowed to choose for herself whether she will live with your oratrix or said defendant.

The premises considered, your oratrix prays that said George F. Harding, whom your oratrix makes defendant to this, her bill of complaint, may be summoned in accordance with the statute and make full, true and perfect answer to said bill, but not under oath, his answer under oath being hereby waived; that upon a final hearing hereof it may be found and decreed that your oratrix is living separate and apart from said defendant without fault on her part, and that said defendant be decreed to provide your oratrix with support and maintenance in accordance with the statute in such

case made and provided during the time she has so lived or may continue to so live separate and apart from said defendant to
129 be paid or secured to your oratrix by the said defendant in such manner as may be just and reasonable, and that the custody of the said children, Madeline and Susan, and of the said Beatrice, if she chooses to live with your oratrix, may be awarded to your oratrix, and the said defendant be decreed to pay your oratrix for their support, maintenance and education such sum or sums as may be reasonable, and that in the meantime, and until such final decree, your oratrix may have the custody of the said Madeline and Susan, and of said Beatrice, if she should choose to live with your oratrix; that defendant be required to pay your oratrix a reasonable sum or sums for her support until the final hearing, and for the support of the children of whom she has the custody, and that allowance be made to your oratrix from time to time, to be paid by said defendant to enable your oratrix to prosecute her suit, and your oratrix also prays for such other, further or different relief as the facts may warrant and to equity appertains.

(Signed) ADELAIDE M. HARDING.
JOHN S. COOPER,
STILES & LEWIS,
Solicitors and of Counsel.

And afterwards, to-wit, on the 2nd day of May, A. D. 1890, a certain amended bill was filed in the office of the clerk of said court, in words and figures following, to-wit:

130 Insert between the second and third lines on page nine of said bill the following allegations, to-wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court.

ADELAIDE M. HARDING } A Bill.
vs.
GEORGE F. HARDING. }

Amendment to the Bill of Complaint in this Case Made Pursuant to Leave of Court.

Your oratrix further represents unto your honors that the said defendant both before and since October, 1888, at Chicago, in said county, and at divers other places in Illinois, and elsewhere, has committed adultery with a woman sometimes going under the name of Mrs. A. R. Lewis, and sometimes under the name of Madam von Louis, or Madam Louiy.

And your oratrix further represents that she first came to the knowledge of the defendant's adulterous connection with said woman by accident in August and September, 1888, and that about October, 1888, the defendant became aware of the fact that your oratrix possessed such knowledge.

131 Your oratrix further charges upon information and belief that said defendant has committed adultery with divers other persons whose names are unknown to your oratrix with the exception hereinafter stated, the times and places of such acts of adultery being also unknown to your oratrix at the present time. The exception above referred to is that of one Mrs. Lathrop, with whom your oratrix alleges, the said defendant committed adultery at divers times in the city of Chicago, and elsewhere, in the years 1876, 1877, and 1878. The said defendant's adultery with said Mrs. Lathrop first became known to your oratrix since the filing of the original bill in this case.

Your oratrix, further complaining, shows unto your honors that said defendant has spent and squandered large amounts of money and property upon lewd women and especially upon the said Mrs. A. R. Louis, and that, at the same time that the defendant was compelling your oratrix to go without the ordinary necessaries of life and to do the drudgery of the household as heretofore related in this bill, he was supporting the said Mrs. Louis in ease and luxury.

STILES & LEWIS,
Sol's for Complainant.

JOHN S. COOPER,
Of Counsel.

132 And afterwards, to wit, on the 19th day of May, A. D. 1891, a certain amended bill was filed in the office of the clerk of said court, in words and figures following, to-wit:

STATE OF ILLINOIS, } ss.
County of Cook, }

In the Circuit Court of Cook County.

ADELAIDE M. HARDING }
vs. }
GEORGE F. HARDING. }

Now comes the said complainant, and by leave of court first had and obtained, amends her original bill herein by striking out the word "third" in the fourth line of the tenth page, and by inserting in its place the word "first."

(Signed) ADELAIDE M. HARDING.
JOHN S. COOPER,
STILES & LEWIS, *Her Sol'ors.*

Be it remembered that heretofore, to-wit, on the 19th day of March, A. D. 1890, a certain answer was filed in the office of the clerk of said court, in words and figures following, to-wit:

133 STATE OF ILLINOIS, } ss:
County of Cook, }

Cook Circuit Court. In Chancery.

ADELAIDE M. HARDING }
vs.
GEORGE F. HARDING. }

Answer of George F. Harding, Defendant.

To the honorable the judges of the circuit court of Cook county, in chancery sitting:

Your defendant, George F. Harding, comes and files this his answer to the bill of complaint filed herein against him by Adelaide M. Harding, and saving and reserving unto himself all benefit of exception to the manifold errors and insufficiencies of said bill, for answer, says:

That he admits,

(1st.) That the plaintiff is his wife, and that she was married to him on November 7th, 1855, now nearly thirty-five years ago, and that they have resided in this city since November, 1862, for nearly twenty-eight years.

(2) That they have the children born to them at the dates named in said bill, seven in number, four of whom, consisting of
134 three sons and the daughter, Adelaide, are of age, and three, being the daughters Beatrice, Susan and Madeline, respectively, and in the order named, of the ages of about 17, 15 and 11 years.

(3) That the eldest son, A. C., is married, with two sons, 8 and 10 years of age, and lives away from home, while all the other children up to the time of the unfortunate difference between the parents have made their homes with the defendant.

Your defendant, further answering, denies that the plaintiff "has "conducted herself towards her husband and children during the "whole period of married life, as alleged in said bill, as a true, "loving, faithful and devoted wife and mother, and has at all times "and in all things made the comfort and happiness of her husband, "and the education and welfare of her children the paramount aim "of her life, and has devoted herself always and unreservedly, and "almost exclusively, to the duties connected with her family and "her home."

That, on the contrary, defendant alleges that the plaintiff was, during the latter part of her married life and after twenty years of

semi-invalidism become distinguished for her devotion to herself, and to her own interests, exclusive of those of her husband and her children, and has placed her own individual and personal interests and inclinations paramount to all others.

135 As such she has lived abroad in the gay capitals of Vienna and Paris, then at Heidelberg, Ems and Nice and taking journeys over Europe, through Spain and into Africa, has expended sometimes with, and sometimes without her children, nearly five years, as stated in said bill, and upon other journeys in this country and in visits and residences at the sea shore, and elsewhere has expended away from her home and husband, certainly one-third and probably half of her married life. These absences have been made and planned by herself, sometimes under the color of the interest of the children, but always with reference to her own pleasures, education and personal advancement, and frequently upon the plea of ill-health, and with little or no consideration for the interests of her husband and her friends.

That in a few weeks after her marriage, in 1855, she demanded of her newly married husband the making of a will of all his property in her favor, to the exclusion of all his friends, and this will and testament was immediately made in her favor, and has continued up to the present time to be the last will and testament of defendant.

That defendant to the best of his ability has always gratified the wishes expressed by her during his whole life, except as hereinafter stated.

That the only wish of the said plaintiff's left ungratified by him, so far as he is able to recall, and to the best of his knowledge,

136 information and belief, was her request early made, and many times repeated, to divide his property with her.

That it has been the paramount wish and effort of her life to realize the independence which such division of his property would give her; that to this end she has bent her energies for many years, in secret ways acquiring a handsome fortune from the defendant without his suspicion or knowledge.

That during the period since October, 1888, and long before, the said plaintiff has been in possession of large sums of money entrusted to her by defendant, for the payment of family expenses, and which she failed so to expend, concealing the fact from defendant, and which she from time to time, without the knowledge or consent of defendant, invested in first railroad mortgages, bonds and first-class railroad stocks, immediately convertible into money

And defendant alleges that the expenditure of one-hundredth of this concealed hoard of her husband's money, at the time of any of the alleged privations, or cruelties, set forth in said bill, would have enabled her to have lived in luxury, instead of enduring the said privations complained of; that every one of the said privations was voluntary and self-inflicted, endured so far as they were in truth endured, for the purpose of posing as a martyr, and converting the

same in this court in this case, into the profits of separate maintenance.

137 Your defendant, further answering, alleges that said privations and sufferings were not only artificial and manufactured, so far as any part thereof are truly *or* character, or number, or for the time therein stated, stated in said bill, but that the same in most instances never existed at all, as therein stated, but are exaggerated, distorted and perverted statements of facts in most cases and are dependent for the character attributed to them, upon partial statements of the facts, the truth and the whole truth in every case being sufficient to disprove every one of them, so far as the same are claimed to support the charge of severity or cruelty against this defendant.

Your defendant, further answering, admits: That until recent years, said plaintiff and husband lived happily together, he treating her with kindness, affection and consideration, and giving her his companionship and love, as alleged in said bill, and he further admits, as alleged in said bill, "that until the month of October, "1888, he always provided liberally for the support and com- "fort of her and his family, and accorded to her that posi- "tion and authority in the household to which she was entitled "as a wife and mother," and has kept for many years servants as therein stated; and that he has kept in his stables a coachman and horses, and vehicles, but not of the kind.

That the truth is, that for the greater part of the time he has kept in his stable but two or three horses; that the horses to a

138 greater number have simply accumulated against his will; that but for a short time, he has kept six horses, not for his own use altogether, but one or more for the use of his carpenter and others connected with him in business, and largely because he had not been able to dispose of them, needing at no time more than two or three horses, which have been chiefly, if not exclusively, used by his wife, he, as the bill states, "having made very little use of them." That all these horses were of small value, worth perhaps at the most $150 each, and unsalable at that price, and that in like manner the carriages and vehicles were many of them old, the most valuable, from ten to twenty years, and altogether were not worth more than $1,000 or $1,500; that instead of keeping his coachman and horses six in number during the year, as stated in said bill, it was his habit to keep his horses in the country a large part of the year, and never, with the exception perhaps of a single year, has he kept either a coachman or horses during the summer months, and until late in the fall.

Your defendant, further answering, admits, that until October, 1888, the plaintiff had credit at some of the dry goods stores in Chicago, dealing in household supplies, and was accustomed to obtain at such stores upon the credit of her said husband, whatever she required for the house, or for clothing for herself or children, as alleged in said bill; but your defendant alleges that while such was

the fact, that this dealing on credit was persisted in by the said
139 plaintiff against his will, and that it was stopped by the defendant more than once within the last five years upon notices, not to allow such credit, given to said shop-keepers, and was attempted to be stopped by him on such notice at other times, and again resumed against his will and protest, prior to said date, and that your defendant was defeated in his effort to deal only for cash, as was his desire, by the willful and deliberate act of said plaintiff, knowing well his wishes, and deliberately disregarding them, and being aided and encouraged therein by the tradesmen whose intent it is to encourage foolish women to excessive expenditure under the credit system; and defendant alleges that his return to the system of dealing only for cash, and stopping the making of bills by plaintiff after October, 1888, was merely resuming a proper course that he thought and meant should be followed, and in which he was in the right; and that, as hereinafter shown, he had in her conduct fresh reasons for insisting upon the abandonment of this loose and extravagant credit system.

Defendant admits that he inherited a large fortune in 1874, but denies that it amounted to a million dollars or more; and that since that date as alleged in said bill he has been in receipt of a large and certain income; but on the contrary he states that the fortune which he inherited was largely in country farm, from which the income has been variable and uncertain, and of late years has amounted to only a small sum.

140 That he has increased, he admits, his gross income, by expending a large sum of money in building in this city, and in improving the country farms, but in so doing he has been compelled to borrow large sums of money, by which he has greatly increased his indebtedness; that a large part of his property is unimproved and brings no income; that his taxes and assessments are very heavy, amounting in all to about the sum of, as nearly as he can ascertain, $17,000 per year. To this must be added insurance expense amounting to about $3,000 per year. That the interest upon his indebtedness, chiefly secured by mortgages upon property is about the sum of $36,000 per year; that the repairs upon the property, and the necessary improvements to keep it occupied, and in a line with other property, exceed the sum of $15,000 per year, to which should be added a large sum annually to meet the depreciation in the buildings, which though repaired or improved, become deteriorated and antiquated, which sum can only be estimated and depends upon the life of the building, but said amount upon the best estimate he is able to make, is not less than the sum of $15,000 per year.

That in addition out of his income is to be taken the expenses, costs, and necessary running expenses of the buildings and lands which are in his care, and from which the income is received, including salaries to the amount of $15,000, as nearly as can be esti mated or ascertained.

141 In addition to this must be deducted, as a loss from his annual income for rent unpaid, the sum of at least $7,500 per year, and to be deducted from his nominal income for premises not let, the additional sum of $7,500 per year.

That his nominal gross income, upon the theory that all of his property is let, and occupied, and the rent is paid, and including uncertain dividends upon insurance stocks, is about the sum of $120,000, but that he has never actually received more than the sum of about $95,000 during any one year, and that his average annual gross receipts for the last ten years, have not equalled the sum of $65,000.

Your defendant further alleges the truth to be that, instead of the fact being, as stated in said bill, that his net income is the sum of $75,000, his net income, after making the necessary deductions for taxes, costs, expenses, insurance, repairs and other necessary outgoes, does not exceed the sum of $15,000 per year, and this, without allowing any sum whatever, to reduce, by way of a sinking fund, or otherwise, his large indebtedness.

That he has never thought it prudent to expend more than was absolutely necessary, by reason of such indebtedness, and his expenditures have been increased, beyond his intention, but have never yet exceeded, at home the sum of about $8,000 per year, and have never exceeded at any time, the sum of $12,000,

142 including therein the expenses of two sons at Cambridge, and other sums spent upon the education of his children; that including the rental value of his house, as furnished, which is not exceeding $1,200 per year, he has never expended at home more than $9,000 per year, and has not, on a average for the last ten years, expended this sum; and that, in his opinion considering the amount of his indebtedness, the amount of his expenses and expenditures at home should be reduced, and whenever his creditors required it, will have to be reduced.

That a portion of the annual rents to the amount of not less than $6,000 is upon property in litigation, and for which suits are pending against the defendant, and the result of which is uncertain; that he is defendant in litigations in which large sums are claimed against him, in the aggregate of not less than $200,000, which sum in prudence should be added to his indebtedness until the amount of such indebtedness shall be ascertained. That his admitted indebtedness, independent of this disputed indebtedness, exceeds the sum of $550,000.

That the true inwardness of this most unfortunate and humiliating difference with said plaintiff is not set forth in said bill; that the truth is, that the plaintiff upon alleged information charging marital infidelity against defendant, willingly assumed to credit the same and in order to compel defendant to the coveted division of his property, undertook to find evidence veri-

143 fying it; but failing in this, has undertaken under the legal advice of attorneys under which she has acted ever

since October, 1888, to achieve the result aimed at, viz: an increase of her already large fortune by means of the absurd charges of privation and cruelty contained in said bill; and that every act done, and every word uttered by defendant complained of, has been willfully and deliberately provoked by complainant. That he has endured as quietly as he could the conduct of his wife, who has not hesitated to spread abroad this scandal, believing her to be insane on particular subjects, and desiring on that account to deal with her more tenderly; and when she undertook to add to the role of compelling him to surrender his property, by threats of public exposure, the further and later refusal to do her duty as wife in attaching her signature to necessary mortgages and instruments required for the preservation of his estate, he then undertook, and not until then, most reluctantly, and step by step, and after repeated offers of reconciliation, and warnings of what might be the consequence, to check her action, and this failing to bring home to her, in the most modest and effectual way, a sense of the loss thus inflicted upon him, and through him upon her.

Your defendant, further answering, says, that it is untrue, and he therefore denies, that in October, 1888, without cause, defendant began toward plaintiff a course of unkind, abusive and cruel
144 treatment, or that after exhausting all means of reconciliation, as alleged in said bill, she was compelled by such treatment to leave his house.

On the contrary, defendant alleges the truth to be, that it has been the rule of his life toward the plaintiff to act toward her with the utmost kindness and consideration, and that his love and attention for her is best emphasized by her own declaration repeatedly made, "that her life had been protracted twenty years by his care and attention, and that in consequence she had outlived the natural term of her days;" and that it is not true, and is upon its face incredible that this defendant should suddenly change his course of treatment and subject her to the cruelty charged in this bill.

But, on the contrary, defendant alleges the truth to be, that he continued the same course of treatment to the very last, up to and since the filing of this bill, in no way failing in his duty as a husband, except as the best of men may sometimes fail; that the truth is, he discovered that, under some pretext, as to which he will observe the reticence of the bill, but to which he has briefly alluded, that the plaintiff undertook to carry out the favorite scheme of her life, to-wit, to compel him to divide his property with her, all the while concealing from him the fortune which she had, by indirection, secured; that this was begun in the summer of 1888; and for this she then selected a tool, fit for her purpose, to whom the
145 defendant's destruction would be a labor of love—a lawyer whom she knew had been his mortal enemy for many years, when he should have been, had he regarded benefits conferred, his greatest friend.

On September 5th, 1888, or thereabouts, she carefully employed

this attorney, not her present attorney or attorneys, sent him a portion of her husband's money, then remitted to her for her needs at the sea shore, as she pretended, and she then carefully arranged the plot to entrap her husband, in order to obtain, if possible, some evidence of the alleged crime which she proposed to fasten upon him, with the aid of low detectives by whom she had him shadowed day and night. That defendant was all the while busy with his affairs and in the maintenance and preservation of his property at home, ignorant of this attack, and only learned the details of it about the middle of October, 1888, upon the opening of safes and vaults and other secret receptacles of the plaintiff, who, always distinguished for her secretiveness, here surpassed *herself*.

That after a residence upon the sea shore of nearly five months, she returned in October, 1888, and the defendant, yet ignorant of the plot, was received by her with even more than her usual demonstrations of affection, although she was then fully engaged, and had been long engaged in plotting his ruin; and that when by some chance, the rumor of some charge against him as com-
146 ing from his wife, reached the ears of the defendant, he at once went to her, and asked, as a husband, the information and explanation to which he ought to have been entitled, and entreated her not to believe the stories he had heard as coming from her, offering to abandon his business and go with her abroad, and expressed his astonishment, that after so many years of married life without a cloud, she should without giving her husband any opportunity for explanation, or without any reason or excuse therefor, credit such stories against him.

And defendant alleges that he was then met by her with the statement that she did not care what he did, if he would make a division of his property—that he should begin by making a deed to her of twenty-five farms in Warren county, but no hint was given of wounded affection or anything but such mercenary considerations and defendant avers that this has been the burthen and leading feature of all the alleged attempts at reconciliation by complainant, and she then further added, that unless this was done, namely said farms deeded to her, she could not, and would not live peacefully with her husband.

And the defendant thus put upon his guard, soon found some of the details, step by step and little by little, of the plot on foot, and for this purpose opened the family safe, in which was the family property; that this safe of course, as alleged in said bill, was kept under lock and key by her, and was then found full of the let-
147 ters of her lawyers and reports of the detectives by whom the defendant had been so long shadowed, each and every one of them a good certificate of the moral character of the defendant.

Defendant further alleges that the advice upon which complainant has been acting was mapped out by this attorney, and it is best to set it out in his own choice language, which your defendant here

gives, in the following extracts from said letters, to-wit: "Get full proof of your right to get divorce in the first place, and then with that in hand, bounce him for a divide." "Your alimony in a case of divorce would trouble him. It would be a liberal allowance of property; you could then dicker with him better for a divide without a divorce. For him to part with it would be like taking his heart's blood."

That during this whole period from October, 1888, defendant has missed, from time to time, various articles of his personal property, such as railroad tickets, early, and later, the stubs of checks, and returned checks which disappeared; and on inquiry his said wife has always denied all knowledge as to them, and as to the said detectives, saying that she knew nothing about them; but defendant early distrusting her statements, upon the loss of the first named tickets, having caused the safe to be opened, and the contents thereof taken to his office, failed to find them, but later, upon opening a box at the Fidelity vaults, really owned by her, but kept in the name of her brother, found them, and also proof of the fact
148 that she was then the owner of a large fortune, amounting to not less than $30,000, of which the greater part was, as elsewhere stated, in first-class railroad mortgages and stocks, equivalent to money.

Defendant, further answering, states that he acknowledges that he did, upon opening said safe at the house, unintentionally remove complainant's diamonds therein with his other property to his office, and that she then owned diamonds worth about $2,500, but defendant says he afterwards returned said diamonds, and that the return would have been much earlier, but for the fact that without demanding them or suggesting her desire for them, to punish him, she at once purchased additional diamonds, namely, a dimond ring at the price of $575.00 and caused the same to be charged against the defendant, and caused defendant to be sued therefor.

Defendant further answering, says, that he denies that he left the room and bed they jointly occupied up to the middle of October, 1888, and has since refused to live and cohabit with complainant.

That it is true, on discovering the property and money abstracted from his pocket, in the Fidelity safety vaults, and spies and detectives surrounding him, under the direction of his affectionate wife, and finding her consulting with his enemies and contriving his ruin, and refusing to perform her duties as wife, and giving up her life and the chief part of her time to persecuting and attacking
149 him, and finding her willing to deny the truth to accomplish her ends, that he has used strong language, as he reasonably might, and expressing nothing but the truth, has perhaps used the language described in said bill, or part thereof, or similar language, and in Saxon phrases, stated to complainant what had been done and what had been discovered.

It is further true that he has not of late, been willing to give countenance, by association in public with, or appearance of affec-

tion to, one who was thus acting as his enemy, and trying to destroy him, but it was upon this ground alone, as she was fully aware.

Defendant further alleges that it is not true that he used a system of rewards and punishments in order to persuade or force the children to decide against their mother; but on the contrary, he has always and at all times, urged that they be true to her, treat her with respect and stand by her, however, asking them to distinguish between standing by their mother, and attacking their father. That he has only punished his daughter Adelaide, for improper and undutiful conduct toward him, and her family, and as he reasonably might, but that he has always held his house and home open to her upon a proper acknowledgement on her part, and the promise of better fashions in the future.

Nor is it true that he has withheld money, or clothing, from his children because they have given their mother sympathy, or
150 support; or that he has ever endeavored to alienate his children from her, but he has on the contrary, endeavored to have them respect her. That indeed, so far as the truth is concerned, each of these statements in said bill, could better be applied to the plaintiff; that his children have always, and at all times, treated him with affection, devotion and kindness, with the single exception of the daughter Adelaid, who has been absent a long time at Lasell seminary, Aburndale, Mass., and whose actions were at the instance and inspiration of her mother, and due rather to impulse and ignorance, and her mother's evil influence than to any other cause.

Defendant, further answering, states, that he has at all times abundantly supplied all the necessaries and comforts of life to complainant and his family, and up to the filing of this bill before and after the discharge of a part of the servants as described in said bill, and as liberally as ever, during the entire period, from the closing of November, 1889, to the first of February, 1890, furnished money and placed it in the hands of his daughter, Beatrice, about seventeen years of age, who was the best fitted, to honestly and faithfully apply it, and act as housekeeper in the absence of the regular housekeeper; and that all the charges and insinuations in said bill, that the said Beatrice did not furnish the necessary supplies, or neglected so to do, as alleged in said bill, are untrue, and that if, in any part true, they could have been righted at any time by a little
151 care, or by applying to defendant, who was on hand during the whole period.

That in any event the alleged corn meal and flour episode, and all the stories of labor, hardship, etc., in said bill, are all untrue in substance—consisting at most, to-wit.—of five women doing their own work with the assistance of a laundress, and a coachman boarding out of the house; but if true in any particular, all these suffering- were self-inflicted by the plaintiff, and could have been ended at any moment, as she well knew, by the use of a single drop of ink, in signing the mortgages and instruments so necessary to the pro-

tection of defendant's property; and it is ridiculous for a woman to set up such stories of privation and sufferings, with many thousands of her husband's money in her pocket, given her expressly to pay her household expenses, and which was never used or expended by her for that purpose; a woman with a fortune in excess of that of most men, and most families, at her command during every hour of the alleged privations!

Your respondent, further answering, admits that on finding his horses and carriages used, and his money expended, as he did find, in promoting a conspiracy to ruin him, that he, merely to prevent this action gave such directions as he thought would prevent it, and to that end he thought it wise that his wife should not be permitted unlimited credit, and returned to the cash system, but supplied money liberally and abundantly during all that time. That
152 it is true that to this end he fixed an amount of money to be expended by his daughters from time to time, and put the money for that purpose in their hands, expending the money for Madeline, the youngest daughter, by the aid of the others, and under the advice of her mother. That he furnished money to the housekeeper without limitation, at all times up to about the last of November, 1889, when she left the house, and afterwards, at all times, allowed, as above stated, to the said Beatrice sufficient money, without any restrictions, for the payment of household requirements and expenses, paying cash for the same. That for the complainant, he furnished, but only as pin money, or for personal use exclusively, the sum of $50.00 per month, paid to her in cash, or upon the bills made by her for her personal use, up to October, 1889, which sum was to be used as she chose in addition to the money given to her, as family expenses, (but which was hoarded up by complainant, and had become a fortune of over $20,000 in cash securities, and a large sum besides, claimed by her as her own personal fortune, and all obtained from the defendant, and his father, for the purpose of the family support, or obtained upon some other account, coming from them, and estimated at fifty or sixty thousand dollars.) That this pin money to be paid in addition was fixed at this sum, but left her in point of fact an unlimited supply, and far in excess of her wants; that she never in her life expended in excess of $100.00 per month for such purposes. That defendant verily believes
153 that both sums of $100.00 and $50.00 (the former fixed in October, 1889) were in access of the money the complainant was in the habit of expending for the purposes mentioned; but when the interest collected and payable to her in shape of coupons and dividends upon the expense money laid up at the Fidelity was added, the sum allowed her for pin money exclusively, (not for the family expenses as alleged in said bill), the money at her command was a net income of $1,500 to $2,500 per year, and at all times, or whenever she chose, she was at liberty to add the principal or the whole of the money given her as family expenses aforesaid, never

appropriated otherwise with defendant's knowledge or consent, and still in her hands to the amount of many thousands of dollars.

That as to carriages and horses, the only regulation made was (except the adjustment of October, 1889) that complainant should not have exclusive use of them; that they should be used upon defendant's order; that he never refused a reasonable request, and perhaps might say, any request upon her part for the use of them, and never permitted or encouraged any coachman in his employ to regulate her hours, or to treat her with any want of respect; but alleges he did discharge the coachman referred to in said bill for the offense alleged, and for the like offenses committed towards others.

But your defendant avers and alleges that said complain-
154 ant sought to create grievances, and desired and tried to aggravate them with a view of filing this bill.

Defendant further answering, says, that the family was never more liberally supplied than during the period complained of—during the year 1888, up to the close of 1889, and that during said years he spent money liberally for the education of his sons at Cambridge, and his daughter Adelaide, at Lasell. That just prior to October, 1889, an arrangement was made by which said complainant was to be paid $100 per month, and an adjustment was had as to the use of the carriages, and the defendant loyally lived up to this agreement, and tendered the money for November, 1889, but the complainant, after agreeing, and being perfectly willing to receive the $100 per month, and exclusive use of the carriage two days in the week, chose to break up said arrangement, for reasons unknown to this defendant, and deliberately refused to sign any mortgages or deeds or other papers whatever for the said defendant, although said mortgages and deeds and documents were each and all of them such as she ought to have signed, and were necessary in dealing with, or using his property to advantage.

That the property of defendant is all, and more than all he is really worth, if indebtedness be regarded, in real estate, including the assets of the Firemen's Insurance Company; that it is necessarily incumbered, because much of his real estate has been purchased subject to incumbrances, or has been incumbered by bor-
155 rowing money upon it, for the purpose of improving it; that it is necessary for him to make and extend mortgages as they may mature, and that such mortgages did mature prior to November, 1889, and complainant utterly refused to permit them to be extended, by refusing to sign mortgages and extensions thereof, that this refusal to permit him to borrow money or to extend his mortgages was done, although much of the property upon which the payments were due had been recently acquired, and was now subject to her dower, and had been nearly paid for, for example the Geneva Lake property, upon which there was only $15,000 due for property worth at least $75,000; that this refusal to unite in a mortgage to pay it was a gross and willful violation of her duty as a

wife. That she also refused to correct a deed conveying a small lot upon Indiana street, 20 x 100 ft.; and defendant avers, that this was the only instance, so far as he remembers, where he requested her to make a deed, during the period of this difference, never hoping to obtain her consent to sell a dollar's worth; that this deed was signed by her after some six months' delay and neglect, she taking at all times a period of delay, sometimes reaching six months, to consult her lawyer, and the deed, when made, proving defective in some small particular, the description not being entirely accurate in the opinion of the purchaser's attorney, she was then asked to correct it, and absolutely refused, saying she would not make any deed or mortgage, or execute any paper; and thereby compelled
156 defendant, as to this property, to give up the contract, for which he was to get $2,300, and at a time when he was overdrawn at bank, and when the smallest consideration for the interests of her family, required that such contract should be carried out; and it was this conduct and repetitions thereof, and worse conduct on complainant's part, that provoked at times harsh language from defendant.

And when mortgages were thus refused to be extended and this deed was refused to be made, defendant notified complainant that if he could not get the said extensions of said mortgages made and if she adhered to her plan to refuse to sign all such papers, unless he would accede to the demands of herself and of her attorneys, to make such a division of his property as to them seemed sufficient, this defendant, in order to bring home to her, the truth of the situation, and feeling that it was wrong in her to compel him to borrow money to enable her to live in luxury, while she denied to him the means of paying his debts, discharged a part only of his servants, three in number out of five, stating that he would re-employ them whenever the mortgages were signed and extended; and defendant alleges that complainant well knew, and was rep-atedly advised during the period from November, 1889, up to the filing of this bill, that she could at any moment recall her servants, and renew her former life, by the use of her pen for a single moment,
157 in joining with her husband in making the necessary payments by mortgages, etc., to keep his property from ruin. But defendant alleges that she refused, with a view to financially strangle him—first threatening him with ruin, and then filing this bill.

Defendant therefore alleges the fact to be that all the acts and injuries and sufferings complained of in said bill are either untrue, or else willfully self-inflicted by said complainant; and a necessary consequence of this high treason to the family relation which he alleges and will prove is nothing other than a determined effort to compel him to give up his property at the demands of herself, upon the penalty of losing it in case he should refuse.

Defendant further answering says that in order to protect his property and to secure the income above mentioned, he has for many

years been, and still is compelled to give his whole time and labor and exclusive attention, to the management and handling of his property, and he verily believes that to such an extent is his personal labor and attention required, that a withdrawal of it would lead to inevitable losses, that would diminish his annual income many thousands of dollars.

Defendant further answering, admits that it is substantially true that he owns the property described in general terms in said bill, except that it is not true that the title to the Geneva Lake property is in John Johnston, Jr., the title thereto being in the joint
158 names of defendant and said Johnston; and defendant does not own a valuable farm at Racine, or other lands in Wisconsin; and defendant denies that he is worth over and above his debts two or three millions of dollars; but if his property were brought to a sudden sale in a crisis, as it well might be, or otherwise, if his indebtedness be not speedily paid, he would not prove worth a half million dollars or perhaps half that sum, and hence it was a great and inexcusable injury and has lead to great losses and mischief to the defendant, and to his estate, the refusal of the said complainant protracted through a year and a half to join him in the necessary deeds and mortgages required to pay his indebtedness, or to arrange and provide for its ultimate payment.

Your defendant, further answering, says, that he denies that the said complainant left his house because unable to endure the privations and cruelties, described, and after exhausting all efforts at reconciliation. On the contrary he alleges the truth to be that she left his home simply because it was necessary to do so in order to maintain a bill for separate maintenance, and that she never made at any time, any real effort toward reconcilitation; that she never as he believes, desired reconciliation, but from the first hour of the employment of the attorneys in September, 1888, up to the filing of this bill conducted herself with an eye single to the effect of her actions upon the maintenance of this case; that as he is in-
159 formed and believes she is of Shaker descent, and as she has advanced in life has become a foe to marriage; that long before the unfortunate differences in question and while living apparently in perfect accord with her husband, she more than once publicly at meetings in the clubs of advanced women, to which she belongs, and privately, expressed this hostility, assigning as her leading objection that marriage fails to give the wife a share in the husband's property which, in advanced phrases, is characterized as the common property, and this, however generous he may be, unless she endures the humiliation of first asking his consent.

Defendant, further answering, says, that all the troubles and difficulties, and alleged sufferings of complainant, mentioned or referred to in said bill, were wholly of her own making, and in nowise the fault of defendant, and defendant has never intentionally been unkind to her in word or act; and all harsh or seemingly unkind language, and every act or word, on the part of defendant, that even

tended toward cruelty, or unkindness, toward complainant, was provoked by her own willful misconduct, at the time; and in no case has the language to, or treatment of her, by the defendant, been more severe than was justified, or excused by the willful provocation, at the time, on the part of complainant. And complainant had, and still hath in her own hands a complete and perfect remedy for all her said troubles, namely, by the mending of her own ways.

160 Defendant, further answering, says that the complainant has left the home of defendant, and is now living separate and apart from him, without excuse therefor, and wholly of her own fault, and without the fault of defendant; and defendant upon learning of such abandonment and desertion by complainant, immediately sent repeated, and urgent invitations to complainant, to return to his house; and has persisted almost to the time of the filing of this answer herein, in earnest efforts to adjust, if possible, the differences between complainant and this defendant; and to that end has used every honorable means and resource at his command, out of his own self-respect, and from love of his children, and from a desire, at this late period of life, to avoid the disgrace and scandal of this litigation. And from these same motives, notwithstanding the misconduct of complainant, the defendant has all the time desired and requested, and still desires and requests that she return to his home, and take and retain her place there as his wife, and as the mother of his children, in which event defendant will do all in his power to fill the remaining days of her life with happiness and peace.

This defendant, further answering, says, that if complainant persists in remaining away from his home, he will still insist on the custody of his minor children; and will make them his special care, and leave nothing undone for the promotion of their welfare and happiness; and as to the two daughters, Susie and Mad-

161 eline, defendant denies that they, or either of them, of their free choice, prefer to remain with their mother away from him, but alleges the fact to be, that complainant has diligently used her influence to poison their young minds against their father, and that freed from this evil influence, defendant believes that they would soon prefer to be and remain in the custody and care of their father.

Defendant further answering denies all the allegations contained in said bill, which he has not heretofore answered unto.

And defendant now having fully answered said bill prays to be discharged with his reasonable costs in this behalf expended.

GEORGE F. HARDING.

WM. J. AMMEN,
Solicitor for Def't.

And afterwards, to-wit, on the 7th day of May, A. D. 1890, a certain amendment to answer was filed in the office of the clerk of said court, in words and figures following, to wit:

162 STATE OF ILLINOIS, } ss:
County of Cook, }

Circuit Court.

ADELAIDE M. HARDING }
vs. } Bill.
GEORGE F. HARDING. }

Amendment to Answer, Pursuant to Stipulation of the Parties, under Date of May 2, 1890.

And now comes said defendant, and saving and reserving, etc., for answer to said bill, as amended on the 2d day of May, A. D., 1890, says that he re-affirms all the statements and allegations of his said original answer to said bill in this case, and for special reply to the amendment aforesaid, states that it is not true that said defendant has at any time or in any place committed adultery with a woman sometimes going under the name of A. R. Louis, and sometimes Madam von Louis, or Madam von Louie, as alleged in said bill. That it is untrue that said plaintiff ever came to the knowledge of said defendant's alleged adulteries with said woman, or that said defendant was aware that said plaintiff possessed such knowledge.

Defendant further answering, says, that it is untrue that he has ever, at any time or place, committed adultery with "one Mrs.
163 Lathrop," as alleged in said bill, or with any other person at any time or place, or at any times or places, as alleged in said bill as amended.

Defendant further answering, says that it is untrue the said defendant has committed adultery at divers times and places in the city of Chicago and other places during the years 1876, 1877 and 1878, with Mrs. Lathrop; nor is it true that said plaintiff ever came to the knowledge of said defendant's adulteries with said Mrs. Lathrop, as alleged in said bill, as amended.

Your defendant further answering, says, that it is not true, that he has spent and squandered a large amount or amounts upon lewd women, and especially upon Mrs. A. R. Louis, or any sums upon such women or upon said Mrs. A. R. Louis, at any time or place; nor is it true that at said time or at other time or times has this defendant compelled the said plaintiff to go without the ordinary necessities of life or to do the drudgery of the household, as alleged in the said amended bill, and while supporting the said Mrs. A. R. Louis in ease and luxury, or otherwise.

Your defendant, on the contrary, alleges that there never was a

moment of the time in the history of said plaintiff during the last ten years when she was not in possession of a fortune approximating $50,000 (the exact sum being unknown to your defendant) consisting as stated in said original answer, of moneys and
164 securities readily convertible into moneys, all of which was derived or received from this defendant and his father, and given to said plaintiff since her marriage for the purpose of being applied for the expenses and support of the family.

Defendant further answering, says, that the real cause of this entire difference is and has been the determination of the said plaintiff to compel said defendant to divide with her his fortune according to the programme of her original attorney, as stated in said answer, which she has religiously followed ever since, and that no compromise, or adjustment or arrangement has ever been possible or practicable with her, although defendant alleges the truth to be that he has offered her twice the sum, in his judgment, that a chancellor would allow her for separate maintenance, in order that she might live in the style and manner, and condition in which for so many years she has been content to live as the wife of this defendant; and that said offers have been made entirely in vain, because of the determination of said plaintiff to demand and compel a division of his entire fortune.

Defendant further answering, says, that he made said offers and endeavored to compromise and adjust the differences with said plaintiff, purely and solely because he felt as a father of seven children and the husband of a wife whose age was nearly fifty-five years, that such differences were not only disgraceful, but that public decency and justice and proper regard for his family, and for
165 public opinion, required from him every effort to prevent an exhibition of his unfortunate domestic difficulty in the courts.

Defendant further answering, says, that he never withheld the sum as before stated in this answer, exceeding a hundred dollars per month, from his ordinary family expenses, and that the withholding of this sum was due entirely to his long expressed determination (after suffering for a year, the refusal upon the part of the plaintiff to sign the extension or renewal of mortgages that had matured), to reduce the family expenses, upon the ground that he could not afford to live as he had lived, while the plaintiff was withholding from him the means to so live, and compelled him to apply his income to the payment of his indebtedness. That all that was done, was done for the purpose of bringing home to said plaintiff, in the gentlest mode possible, the fact that she was strangling her husband financially, and that he could not keep up his family expenses and at the same time pay his debts without her aid in the renewal and extension of said mortgages.

Your defendant, further answering, denies each and every allegation made in said bill as amended, not hereinbefore fully answered unto.

And now, having fully answered said amended bill, your
166 defendant prays to be dismissed with the reasonable costs in this behalf expended, and prays judgment, etc.

(Signed) GEO. F. HARDING.

WM. J. AMMEN,
Solicitor for D'f't.

And afterwards, to wit, on the 3rd day of July, A. D. 1890, a certain replication was filed in the office of the clerk of said court, in words and figures following, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of Cook County, June Term, A. D. 1890. In Chancery.

ADELAIDE M. HARDING }
vs. }
GEORGE F. HARDING. }

Adelaide M. Harding, Complainant, to the Answer of George F. Harding to Original Bill and Amendments Thereto.

167 This repliant, saving and reserving to herself now, and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendant for replication thereunto, says, that she will aver, maintain, and prove her bill of complaint as amended to be true, certain, and sufficient in the law, to be answered unto; and, that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant without this; that any other matter or thing whatsoever, in the said answer contained, material or effectual in the law, to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed, or denied, is true. All which matters and things this repliant is ready to aver, maintain, and prove, as this honorable court shall direct, and humbly pray-, as in and by her said bill she has already prayed.

STILES & LEWIS,
Sol's for Complainant.
JOHN S. COOPER,
Sol. for Compl't.

And afterwards, to-wit, on the 21st day of May, A. D. 1891, a certain demurrer was filed in the office of the clerk of said court, in words and figures following, to-wit:

168 STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of Cook County, Term A. D. 1891. In Chancery.

ADELAIDE M. HARDING }
vs. } Term No. 1175.
GEORGE F. HARDING. }

Demurrer of George F. Harding, Defendant, to the Bill of Complaint, as Amended, of Adelaide M. Harding, the Above Named Complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things, in said plaintiff's bill of complaint as amended, contained, to be true in such manner and form as the same are therein set forth and alleged, doth demur to the said bill, and for cause of demurrer, shows that the said complainant has not, in and by her said bill as amended, made or stated such a case as doth or ought to entitle her to any such discovery or relief as is thereby sought, and prayed for, from or against this defendant. And said defendant particularly demurs to that portion of said bill as amended relating to charges of adultery against this defendant as insufficient in law to be answered unto, and by reason of
169 the particulars of time and place and other particulars not being stated in relation to said charges.

Wherefore, and for divers other good causes of demurrer appearing in the said bill as amended and to said part thereof, the defendant doth demur thereto, and he prays the judgment of this honorable court, whether he shall be compelled to make any further or other answer to the said bill as amended and particularly to said charges of adultery; and he humbly prays to be hence dismissed, with his reasonable costs and charges, in this behalf, most wrongfully sustained.

WM. J. AMMEN,
Solicitor for Def't.

And afterwards, to-wit, on the 3rd day of January, A. D. 1893, a certain stipulation was filed in the office of the clerk of said court, in words and figures following to-wit:

Stipulation Filed January 3rd, 1893.

STATE OF ILLINOIS, } ss:
County of Cook, }

Circuit Court, Cook County.

ADELAIDE M. HARDING }
vs. } ss.
GEORGE F. HARDING. }

Petition for Separate Maintenance.

When this suit for separate maintenance began, the plain-
170 tiff had in her hands a large sum of money and property, convertible into money and applicable to her support, received, from me and from my family; and when this shall be expended and applied to her support, for which it was given her, at that time whatever the result of this case, it would be my duty as I understand it, to give her further support; and this I should do whatever the result of this case and, without reference to whether she can exact it or not.

I am confident of making good my defense, if the case must be tried, but the considerations suggested make the fact that the plaintiff may prove to have no real cause of action immaterial.

Hence it seems to me to be wise in the interest of my family and of peace, if I can put an end to this litigation to do so by consenting to a decree giving her for separate maintenance such a sum as the court may find to be just and equitable, after a due consideration of the evidence bearing upon the amount of the allowance. Hence I give my consent that a decree for separate maintenance shall be entered in favor of the plaintiff without a finding or trial of the issue in this case.

That this consent is not collusive is sufficiently shown by the length and character of the litigation. I further offer and stand
171 ready to make such other or further or different stipulation by amendment of the pleadings or otherwise, as may, in the opinion of your honor, be required to make it unnecessary for the court to hear and decide upon the issues and evidence in this case after a long and expensive hearing.

To this end I declare my willingness to stipulate and I do hereby stipulate that the plaintiff, at the time of the commencement of this suit, was living and ever since has been living separate and apart from her husband without her fault, and may take a decree with my consent for such sum as may be reasonable and just for her separate maintenance.

This is the same offer which I have made by way of an attempt at

compromise ever since the commencement of this suit, in which effort a- compromise I have not hesitated to offer double the amount that, in my opinion, should be allowed for her separate maintenance by the court.

GEORGE F. HARDING, *Pro Se.*

WM. J. AMMEN,
Solicitor for D'f't.

And afterwards, to-wit, on the 15th day of November, A. D. 1899, a certain order of supreme court, was filed in the office of the clerk of said court, in words and figures following, to-wit:

172 At a supreme court, begun and held at Springfield, on Tuesday, the sixth day of June, in the year of our Lord, one thousand eight hundred and ninety-nine, within and for the State of Illinois.

Present—James H. Cartwright, chief justice.
Alfred M. Craig, justice.
Jacob W. Wilkin, justice.
Joseph N. Carter, justice.
Benjamin D. Magruder, justice.
Jesse J. Phillips, justice.
Carroll C. Boggs, justice.
Edward C. Aiken attorney general.
Charles M. Woods, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered, that afterwards, to-wit, on the seventeenth day of June, A. D. 1899, the same being one of the days of the term of court aforesaid, the following proceedings were by said court, had and entered of record, to-wit:

ADELAIDE M. HARDING
vs.
GEORGE F. HARDING. } No. 774.

Appeal from Appellate Court of Illinois, First District.

And now, on this day, this cause having been argued by
173 counsel, and the court having diligently examined and inspected as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here, that neither in the record and proceedings aforesaid nor in the rendition of the decree aforesaid, is there anything erroneous, vicious or defective, and that in that record there is no error:

It is considered by the court that the decree aforesaid be modified by reducing the amount to be paid the appellee, until the further order of the court, to the sum of three thousand six hundred dollars per annum, to be paid in monthly installments of three hundred dollars. It is also ordered the decree to be rendered in pursuance of the opinion of this court shall provide that such alteration in the allowance for alimony may be made by future decree or decrees as shall or may be found to be just and reasonable, and as so modified, the decree of the circuit court, and the judgment of the appellate court will be affirmed, and the cause will be remanded to the circuit court of Cook county with directions to enter a decree in conformity with the opinion of the court herein.

And it is further considered by the court that the said appellee recover of and from the appellant her costs by her in this behalf expended, and that she have execution therefor.

174 STATE OF ILLINOIS, } ss:
Supreme Court, }

I, Christopher Mamer, elected clerk of the supreme court, in and for the northern grand division of the State of Illinois, and keeper of the records and seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said supreme court in the above entitled cause of record in my office.

In testimony whereof, I have set my hand and affixed the seal of the said supreme court at Springfield, this 9th day of November, A. D. 1899.

CHRISTOPHER MAMER,
[SEAL.] *Clerk of the Supreme Court.*

Endorsed on the wrapper of the above order are the following words and figures, to-wit:

"Gen. No. 79,020. Circuit court Cook county. Adelaide M. Harding *vs.* George F. Harding. Final order of supreme court. Filed Nov. 15, 1899, John A. Cook, clerk. Peck, Miller & Starr, sol'rs for comp."

Heretofore, to-wit, on the 24th day of July, A. D. 1899, a certain mandate from the supreme court was filed in the office of the clerk of said court, in words and figures following to-wit:

175 At a supreme court, begun and held at Springfield, on Tuesday, the sixth day of June, in the year of our Lord one thousand eight hundred and ninety-nine, within and for the State of Illinois.

Present: James H. Cartwright, chief justice.
Alfred M. Craig, justice.
Jacob W. Wilkin, justice.

Joseph N. Carter, justice.
Benjamin D. Magruder, justice.
Jesse J. Phillips, justice.
Carroll C. Boggs, justice.
Edward C. Akin, atterney general.
Charles M. Woods, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered, to-wit, on the seventeenth day of June, A. D. 1899, the same being one of the days of —— the term of court aforesaid, the following proceedings were by said court, had and entered of record, to-wit:

ADELAIDE M. HARDING
vs.
GEORGE F. HARDING. } No. 775.

Appeal from appellate court of Illinois, first district, No. 7765.

And now, on this day, this cause having been argued by
176 counsel, and the court having diligently examined and inspected, as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and that in that record there is no error;

Therefore it is considered by the court, that the judgment aforesaid be affirmed in all things, and stand in full force and effect, notwithstanding the said matters and things therein assigned for error. And it is further considered by the court that the said appellee recover of and from the said appellant her costs by her in this behalf expended, and that she have execution therefor.

I, Christopher Mamer, elected clerk of the supreme court, in and for the northern grand division of the State of Illinois, do hereby certify that the foregoing is a true copy of the final order of the said supreme court in the above entitled cause of record in my office.

In testimony whereof, I have set my hand and affixed the seal of the said supreme court at Springfield, this 9th day of November, A. D. one thousand eight hundred and ninety-nine.

CHRISTOPHER MAMER,
[SEAL.] *Clerk of the Supreme Court.*

177 Endorsed on the back of said order are the following words and figures.

"No 79020. Circuit court of Cook county, in chancery. Harding "vs. Harding, No. 79020. Certified copy of supreme court affirming "order,—affirming decretal order of October 19, 1899. Filed Jul. "24, 1899. John A. Cooke, clerk."

And afterwards, to-wit, on the 1st day of July, A. D. 1890, the following proceedings were had and entered of record in said court, to-wit:

ADELAIDE M. HARDING
vs.
GEORGE F. HARDING. } 79020. Bill.

Now on this day come the parties hereto and by their respective solicitors aforesaid and this cause coming on to be heard upon the petition and motion of the complainant for alimony *pendente lite* and for allowance for the support of the said children, Susan and Madeline, and the court having heard the evidence and the arguments of counsel and being fully advised in the premises,

It is therefore ordered, adjudged and decreed, that the defendant pay to the complainant or to her solicitors the sum of nine hundred dollars within ten days from the entry of the decree, for the
178 support of herself and her said children to July 1st, 1890, and that he pay to complainant or to her solicitors the further sum of three hundred dollars on the first day of each and every month commencing with the first day of July, 1890, for her support during the pendency of this suit.

It is further ordered, adjudged and decreed, that said defendant pay to said complainant or her solicitors within 30 days of the entry of this decree the further sum of one thousand dollars as solicitors' fees, and four hundred dollars for other expenses of her suit.

It is further ordered and decreed, that said defendant pay to said complainant or to her solicitors the sum of one hundred and eighty dollars on the first day of each and every month commencing on the first day of July, 1890, for the support of said children, Susan and Madeline, until the further order of this court provided that this order shall be without prejudice to said defendant to apply at any time hereafter as he may be advised for an order for the custody of said children and this order shall not be construed as a finding that complainant is entitled to such custody.

It is further ordered, adjudged and decreed, that the payment of the foregoing sums of money and each and all of them shall be and is hereby made conditional upon the said complainant join-
179 ing with the said defendant in any conveyance or conveyances of real estate which it may be proper or necessary to make for the purpose of renewing the incumbrances thereon, or of preserving his estate and in case the parties cannot agree as to whether any conveyance is within the purposes aforesaid the matter shall be determined by I. K. Boyesen, master in chancery, to whom this cause is hereby referred for that purpose and the said defendant shall not be excused from making any of the payments aforesaid in the manner and at the times of above specified until said complainant shall be in default by refusing to join in a deed or deeds which the said master shall find after a hearing before him is within the purposes aforesaid.

To all of which the defendant excepted and prayed an appeal to the appellate court of the State of Illinois, first district, which appeal is allowed upon the defendant entering into a bond in the penal sum of four thousand dollars with security to be approved by the court, conditioned as provided by law and it is ordered that twenty days be allowed for filing said bond and certificate of evidence herein.

And afterwards, to-wit, on the 8th day of July, A. D. 1890, the following proceedings were had and entered of record in said court, to-wit:

180 ADELAIDE M. HARDING vs. GEORGE F. HARDING. } No. 79,020. Bill.

Now comes the parties to this suit by their solicitors aforesaid and the cause coming on to be heard upon the motion of the complainant for an allowance to enable her to defend the appeal taken by defendant from the order heretofore entered for temporary alimony, etc., and the court having heard the arguments of counsel and being fully advised in the premises it is ordered that the defendant pay the complainant within thirty days from the entry of this order the sum of three hundred dollars for the purpose aforesaid.

And therefore the defendant prays an appeal from the said order to the appellate court of Illinois in and for the first district which is allowed upon the defendant giving bond in the penal sum of five hundred dollars conditioned according to law and with surety to be approved by the court within twenty days from this date.

It is further ordered that defendant have twenty days in which to file a certificate of evidence herein.

And afterwards, to-wit, on the 23rd day of June, A. D. 1891, the following proceedings were had and entered of record in said court, to-wit:

181 ADELAIDE M. HARDING vs. GEORGE F. HARDING. } 1175. Bill.

Now comes the parties to the above entitled cause by their respective solicitors and the demurrer of the defendant to the bill as amended coming on for hearing it is ordered that the answer heretofore filed in said cause stand as answers to the bill as last amended to all of which the defendant now here excepts and it is further ordered that the defendant have leave and the same is hereby given to file herein an additional answer to amendment to said answer already filed to the said bill as last amended, within ten days from this date.

And afterwards, to-wit, on the 8th day of May, A. D. 1893, the following proceedings were had and entered of record in said court, to-wit:

ADELAIDE M. HARDING
vs.
GEORGE F. HARDING. } 79020. Bill.

On reading and filing mandate of the supreme court it is on motion ordered that the same be and hereby is redocketed in conformity thereto.

182 And afterwards, to-wit, on the 10th day of May, A. D. 1893, the following proceedings were had and entered of record in said court, to-wit:

GEORGE F. HARDING
vs.
ADELAIDE M. HARDING. } 79020. Bill.

This cause coming on to be heard, upon the motion to set the said cause down for hearing and to hear the same, it is ordered that this cause be and the same is referred to Horatio L. Wait one of the masters in chancery of this court to take evidence and report the same with his conclusions herein upon the issue and question as to the amount or amounts if any to be allowed to complainant and to be decreed to be paid by defendant to complainant for alimony support or otherwise herein and upon the other issues herein than the question as to whether complainant at the time of the commencement of this suit was and since that time has been and is living separate and apart from her husband the defendant without her fault, said defendant having admitted from the records herein, and now admitting in open court that the complainant was at the time of the commencement of this suit and since that time has been and is living separate and apart from her said husband without her fault.

And it is further ordered that upon said hearing all competent evidence heretofore taken in this case may be read upon said
183 hearing before the master and other competent evidence may be introduced by either party, and that the said master submit his report herein within fourteen days from and after this date, and that the respective parties have such portions of time respectively within said time so limited for the introduction of evidence and argument as the said master shall prescribe.

And afterwards, to-wit, on the 15th day of April, A. D. 1896, the following proceedings were had and entered of record in said court, to-wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court.

GEORGE F. HARDING }
vs. } Bill.
ADELAIDE M. HARDING. }

Order of April 15, 1896.

This cause coming on to be heard upon the motion to set the said cause down for hearing and to hear the same, it is ordered that this cause be, and the same is referred to Horatio L. Wait, one of the masters in chancery of this court, to take evidence and report the same with his conclusions herein, upon the issue in question
184 as to the amount or amounts, if any, to be allowed complainant, and to be decreed to be paid, by defendant to complainant for alimony, support or otherwise herein, and upon other issues herein than the question as to whether complainant at the time of the commencement of this suit, was, and since that time has been, and is, living separate and apart from her husband, the defendant, without her fault; said defendant having admitted upon the record herein as by his written stipulation filed herein on January 3, 1893, and for the purpose of this trial only, that the complainant was at the time of the commencement of this suit, and since that time has been and is, living separate and apart from her said husband without her fault.

And it is further ordered that upon said hearing, all competent evidence heretofore taken in this cause may be read upon said hearing before the master, and other competent evidence may be introduced by either party, and that the said master submit his report herein within fourteen days from and after this date, and that the respective parties have such portions of time respectively within said time so limited, for the introduction of evidence and argument as the said master shall prescribe. This order is entered *nunc pro tunc* as of May 10, 1893.

And afterwards, to-wit, on the 17th day of July, A. D. 1896, the following proceedings were had and entered of record in said court, to-wit:

185 STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court.

GEORGE F. HARDING }
vs } Bill.
ADELAIDE M. HARDING. }

Order of July 17, 1896.

This cause coming on to be heard on the motion of complainant that the court order that the report of Hon. H. L. Wait, master in chancery of this court, to whom this case was heretofore referred, be returned into court forthwith, and on the other motions and petitions of the parties herein, and both parties being present in court by their counsel, and the said master in chancery being present in court and consenting thereto, and the court having heard the said motions and petitions and the arguments of counsel and the evidence and proofs adduced and being advised in the premises, doth here now order that said master in chancery do forthwith return his report of evidence in said cause offered before him including all exhibits, and of his findings and conclusions in said cause and of the objections and exceptions thereto, and the motions made before him and his objections to this court, and file the same with the clerk of this court.

And it is further ordered that the question of the amount
186 of the fees of said master for his services in taking the evidence in said cause and making his report herein and the question of the amount of the solicitors' fees of the solicitors, and all other questions involved in said motions or petitions for complainant herein be, and all other questions and issues in said cause, and each of them, are hereby reserved for the future order of the court; and said parties are hereby allowed to October 1, 1896, in which to present certificates of evidence herein, as to the proceedings of the present term of this court in said cause.

And it is further ordered that the cause be, and the same is hereby set for final hearing on September 10, 1896, on the report of such master and exception of the parties thereto, and on all other questions or issues, if any, in said case.

And afterwards, to-wit, on the 26th day of July, A. D. 1897, the following proceedings were had and entered of record in said court, to-wit:

ADELAIDE M. HARDING, Complainant,
vs.
GEORGE F. HARDING, Defendant.
} Gen. No. 79,020, Term No. —.

This cause having heretofore at the September and Octo-
187 ber terms 1896, of this court, come on to be heard upon the bill of complaint as amended herein, the answer as amended of the defendant thereto, the replication of the complainant to such answer, and the petitions and application of complainant for the custody of children, and upon the report of Horatio L. Wait, master in chancery of this court, filed herein on the 22nd day of September, 1896, under and in pursuance of the order of reference to him theretofore entered herein, and upon the evidence referred to in the report of said master and upon which the said hearing before him on said reference was had; and the court having at the close of the said hearing taken said cause under advisement; and this cause also having come on to be heard at the January term, 1897, of this honorable court, and said cause being under advisement as aforesaid, upon the objections and application of the complainant for an allowance of solicitors' fees to the complainant and against the defendant herein, and for the allowance to the complainant and against the defendant for expenses of prosecutiong her suit, and upon the petition of the defendant theretofore, on January 22nd, 1897, filed herein, and the complainant's answer thereto filed February 4th, 1897, and upon the proofs and evidence taken and heard in open court upon said hearing last mentioned; and the court having heard the argument of counsel and having thereupon taken the said cause under advisement:

188 And the court having now considered and being duly advised in the premises, doth find that the allegations of the said bill of complaint as amended are true; and that the said complainant, at the time of the commencement of this suit, was living, and ever since that time has lived and is now living separate and apart from her husband, the said defendant, without her fault; and that the equities of this cause are with the complainant.

And the court doth further find and adjudge that the findings and conclusions of the said master in chancery, Horatio L. Wait, in his said report contained, are correct and that the exceptions of each of the parties thereto are not well taken, and that such exceptions and each of them be and the same are overruled. But the court doth further find that since the taking of the proofs and evidence before said master was concluded and since the said hearing herein upon the exceptions to the said report of the said master at the September and October terms of this court, a change has so taken place in the value of property and the circumstances of the defendant, in that the rental value of the property of the defendant has been temporarily depressed and reduced and the amount of the defendant's in-

come therefrom temporarily reduced, in the opinion of the court, and that the allowance fixed by the master should be reduced to the amounts hereinafter specified:

189 It is therefore ordered, adjudged and decreed by the court that the complainant is entitled to an allowance from defendant for her reasonable support and maintenance while they, the said complainant and the said defendant have so lived separate and apart, and while they do so live separate and apart; and that having reference to the condition of the parties in life, and the circumstances of this case, the said complainant be allowed and that the defendant do pay to the complainant, the sum of six thousand and four hundred dollars ($6,400) per year from the date of the entry of this decree (this decree being without prejudice to such order of July 1st, A. D. 1890, as to the amount so unpaid thereunder) and that the defendant do pay to the complainant as and for such allowance for her separate maintenance hereby made accruing from and after the entry of this decree the said sum of six thousand four hundred dollars ($6,400) a year from and after the date of the entry of this decree until the further order of the court, and that the said sum of six thousand, four hundred dollars ($6,400) from and after the entry of this decree, be paid in monthly installments of five hundred thirty-three and one-third dollars ($533⅓) per month, payable in advance, on the 26th day of each and every month commencing on the 26th day of July, 1897, until the further order of the court.

And the court doth further find that the said complainant has supported the daughters of the complainant and defendant,

190 Susan Grace Harding and Madeline Harding, from the date of the filing of the bill of complaint herein until the said daughters respectively arrived at the age of eighteen years; that the said Susan Grace Harding became eighteen years of age on the 12th day of December, 1892, and the said Madeline Harding became 18 years of age on the 18th day of November, 1896; and the court doth find, order, adjudge and decree that the complainant have, and she is hereby awarded, the custody of the said daughters from the date of the filing of the bill of complaint herein; and that the defendant do pay to the complainant, within twenty days from the date of the entry of this decree the sum of two hundred dollars ($200) per month for each and every month from the date of the filing of the bill of complaint herein until the 12th day of December, 1892, as and for the maintenance of the said two daughters until said last mentioned date, and the sum of one hundred dollars ($100) per month from the said 12th day of December, 1892, until the 18th day of November, 1896, as and for the support and maintenance of the said Madeline Harding between said two dates last mentioned, the said sums amounting in the aggregate to the sum of eight thousand one hundred fifty-six dollars and sixty-one cents ($8,156.61).

And it is further ordered, adjudged and decreed that the defendant do also pay to the complainant or her solicitors, John S. Miller

and Merritt Starr, as solicitors' fees herein of the said solicit-
191 ors last mentioned, the sum of eight thousand dollars ($8,000) within twenty days from this date.

And the court doth further order, adjudge and decree that the defendant do also pay to the complainant within twenty days from the date of the entry of this decree, the further sum of nine hundred and ninety-six and fourty-seven hundredths dollars which she has paid or incurred to enable her to prosecute this suit in excess of the sum heretofore allowed to her therefor and which is allowed to her for that purpose.

And it is further ordered that the defendant do pay the costs of this suit to be herein taxed.

And it is further ordered, adjudged and decreed that this decree be made a lien on the real estate of the defendant and in case of default in the payment of the said installments of money as the same become due or the costs herein, that execution issue thereon; and it is ordered that either party be at liberty to apply to the court as circumstances may require.

And it is further ordered, and decreed that the petition and motion of defendant to reduce or modify, or suspend or release or discharge the defendant from payment of the allowance made for temporary alimony by the decretal order entered herein on the first day of July, 1890, or to modify or affect said order last mentioned, be, and the same is, denied; and that this decree is without prejudice to the said decretal order of July 1, 1890, as to the amounts of money
192 which have accrued or become payable to the complainant thereunder at the time of the entry of this decree.

And the said defendant objects and excepts to the foregoing decree, and to every finding and every portion thereof, severally, and prays an appeal therefrom to the appellate court in and for the first district of Illinois, which appeal is hereby allowed, and twenty days is hereby given said defendant in which to file an appeal bond in the sum of $5,000.00, with security to be approved by the clerk of this court.

And by agreement of the parties to this cause said defendant and complainant are each hereby allowed sixty days from this date within which to present a certificate of evidence as to the evidence and proceedings of, in, during or subsequent to the January term, 1897, of this court in said cause.

And afterwards, to-wit, on the 8th day of December, A. D. 1899, the following proceedings were had and entered of record in said court, to-wit:

November Term. In Chancery.

ADELAIDE M. HARDING
vs.
GEORGE F. HARDING. } 79,020. Bill.

DECEMBER 8TH, A. D. 1899.

193 This day come again the parties hereto by their solicitors respectively; and this cause coming on to be heard on the final order of the supreme court of Illinois in said cause, entered on the seventeenth day of June, A. D. 1899, a duly certified copy of which was, pursuant to the statute in such case made and provided, duly filed herein in the office of the clerk of this court on the fifteenth day of November, A. D. 1899; and upon the motion of complainant herein by her solicitors here now made in open court on due notice to the defendant, that the court here now enter its decree modifying the decree heretofore entered herein on the twenty-sixth day of July, A. D. 1897, in conformity with the said order of said supreme court of Illinois; and this court having heard said motion and having inspected said duly certified copy of the order of said supreme court of Illinois, and having heard arguments of counsel and being advised in the premises, doth here now order, adjudge and decree that in conformity with said order and said mandate of said supreme court said final decree heretofore entered herein on the twenty-sixth day of July, A. D. 1897, be and the same is hereby modified by reducing the amount provided by said decree of July 26, 1897, to be paid thereunder by the defendant to the complainant from the sum of six thousand four hundred dollars ($6,400) per year in said decree of July 26, 1897, mentioned, to the sum of three thousand six hundred dollars ($3,600) per annum, to be paid in monthly installments of three hundred dollars each, and that
194 for that purpose the words "three thousand six hundred dollars ($3,600)" be and the same are substituted in the said decree of July 26, 1897, in lieu and stead of the words "six thousand four hundred dollars ($6,400)" where the same occur, and that the words three hundred dollars ($300)" be and the same are substituted in the said decree of July 26, 1897, in lieu and stead of the words "five hundred and thirty-seven and one-third dollars ($53⅓)" where the same occur.

And the court doth further order, adjudge and decree that such alteration of this decree in the allowance of alimony may be made by future decree or decrees as shall or may be found to be just and reasonable.

And the court here now further orders, adjudges and decrees that said decree of this court entered on said July 26th, 1897, so far as not inconsistent herewith, and that said decree of July 26, 1897, as so modified, stands in full force; and that the same be obeyed by the parties hereto.

And it is further ordered that the petition heretofore filed by complainant for additional allowances, being for solicitors' fees, etc., since the entry of said decree of July 26, 1897, be reserved and be and is set down for hearing on the 3d day of January, 1900, at ten o'clock a. m ; and said defendant is ruled to answer said petition within ten days from this date.

195 UNITED STATES OF AMERICA :

STATE OF ILLINOIS, } ss :
County of Cook, }

I, John A. Cooke, clerk of the circuit court of Cook county, in the State aforesaid, do hereby certify that I am the keeper of the records and files of said court, and that the above and foregoing is a true, perfect and complete transcript of the record per præcipe filed in my office on the 8th day of January, 1901, in *an* certain cause lately pending in said court, on the chancery side thereof, between Adelaide M. Harding, complainant, and George F. Harding, defendant.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at Chicago, in said county, this 9th day of January, A. D. 1891.

[SEAL.] JOHN A. COOKE, *Clerk.*

STATE OF ILLINOIS, } ss :
County of Cook, }

I, Abner Smith, chief justice of the circuit court of Cook county, in the State of Illinois, hereby certify that John A. Cooke, who signed the above certificate, was at the time of signing the same, and is now, clerk of the said circuit court of Cook county, duly commissioned and qualified ; that said court is a court of record,
196 having a clerk and seal ; that said attestation is in due form and by the proper officer, according to the laws of the State of Illinois, and that the above signature of said clerk is genuine.

Witness my hand and seal at Chicago, in said county of Cook, this 9th day of January, A. D. 1901.

[SEAL.] ABNER SMITH,
Chief Justice of the Circuit Court of Cook County.

UNITED STATES OF AMERICA :

STATE OF ILLINOIS, } ss :
County of Cook, }

I, John A. Cooke, clerk of the circuit court of Cook county, in the State of Illinois (said court being a court of record), do hereby certify that the Honorable Abner Smith, whose name is subscribed to

the annexed and foregoing certificate was, at the time of the signing thereof, and now is, one of the judges of said circuit court, duly elected, commissioned and qualified, and that his said signature is genuine.

In witness whereof, I have signed my name and affixed the seal of said circuit court, at my office, in the city of Chicago, in said Cook county, this 9th day of January, 1901.

[SEAL.] JOHN A. COOKE, *Clerk.*

197–324 Mr. WORKS: Under the stipulation I offer in evidence the testimony of the defendant taken in the Illinois case.

My husband and I lived together as husband and wife until about the 10th of October, 1888.

Q. Has there been to your knowledge, any misconduct as his wife?

A. No, sir; never. From 1872 to February 1, 1890, we lived at 2536 Indiana avenue; previous to that on same near 18th street; the home, No. 2536 was in every way comfortable.

* * * * * * *

325–381 Mr. WORKS: I offer in evidence the testimony of Miss Adelaide Harding, a daughter of the plaintiff and defendant, as taken in the Illinois court, under the stipulation which has been filed here.

ADELAIDE HARDING, a witness on behalf of defendant, testified as follows:

* * * * * * *

382–427 Mr. WORKS: I offer in evidence the testimony of Miss Susie Harding in the Illinois case, under the stipulation here.

SUSIE HARDING, a witness on behalf of the defendant testified:

428–433 Under the stipulation we offer in evidence the deposition of Katie Coughlin taken in the Illinois case.

Deposition of KATIE COUGHLIN, February 7, 1891, taken for defendant.

* * * * * * *

434–444 Mr. WORKS: Under the stipulation, we offer the deposition of Maggie Galvin in the Illinois case.

Deposition of MAGGIE GALVIN, on behalf of defendant, January 24, 1891.

* * * * * * *

445–450 Mr. WORKS: Under the stipulation, we offer the deposition of Anna Galvin taken in the Illinois case.

Deposition of ANNA GALVIN, January 24, 1891, for defendant.

* * * * * * *

451 Mr. WORKS: Under the stipulation, we offer the deposition of George W. Brayton, taken in the Illinois case.

Deposition of GEORGE W. BRAYTON, for defendant, taken October 4, 1890.

* * * * * * *

452–455 Mr. WORKS: Under the stipulation, we offer the testimony of J. J. Thiesen in the Illinois case.

J. J. THIESEN, witness for defendant, testified, December 3, 1890:

* * * * * * *

456 Mr. WORKS: Under the stipulation, we offer the testimony of Edward Iverson in the Illinois case, taken December 3rd, 1890.

457 EDWARD IVERSON, for defendant testified:

* * * * * * *

Mr. WORKS: I offer now the testimony of Edward Iverson in the Illinois case, recalled for defendant, December 13, 1890.

458 EDWARD IVERSON, recalled for defendant:

* * * * * * *

459–461 We offer the testimony of William Reed, taken December 3rd, 1890, in the Illinois case. It is offered under the stipulation.

WILLIAM REED, for defendant, testified as follows:

* * * * * * *

462–464 Mr. WORKS: I offer the further testimony of this same witness in the Illinois case, under the stipulation.

WILLIAM REED, for defendant, testified, February 2, 1892:

* * * * * * *

465–467 Mr. WORKS: Under the stipulation, we offer the evidence of Clara Estelle Taylor in the Illinois case, taken December 6th, 1890.

CLARA ESTELLA TAYLOR, witness for defendant, testified:

* * * * * * *

468 Mr. WORKS: Under the stipulation, I offer the testimony of Catherine Wren, taken in the Illinois case, December 6, 1890.

CATHERINE WREN, witness for defendant, testified:

* * * * * * *

469–471 Mr. WORKS: Under the stipulation, we offer the testimony of Arthur C. Blayney, taken December 10, 1890, in the Illinois case.

ARTHUR C. BLAYNEY, witness for defendant, testified:

* * * * * * *

472–475 Mr. WORKS: Under the stipulation, I offer the testimony of William A. McLean, taken in the Illinois case December 10, 1890.

WILLIAM A. MCLEAN, for defendant testified:

* * * * * * *

476 Mr. WORKS: Under the stipulation, I offer the testimony of Benjamin Thompson, in the Illinois case, taken Decem-
477–481 ber 13th, 1890.

BENJAMIN THOMPSON, witness for defendant testified:

* * * * * * *

Mr. WORKS: Under the stipulation, I offer the testimony of Charles B. Wright in the Illinois case.

CHARLES B. WRIGHT, for defendant, testified:

* * * * * * *

482 Mr. WORKS: Under the stipulation, I offer the testimony of Edward P. Harris in the Illinois case.

EDWARD P. HARRIS, for defendant, testified:

* * * * * * *

483 & 484 Mr. WORKS: Under the stipulation, I offer the testimony of R. W. Iverson, in the Illinois case.

R. W. IVERSON, a witness for defendant, testified:

* * * * * * *

485 Mr. WORKS: Under the stipulation, I offer the testimony of Benjamin Thompson, recalled in the Illinois case.

BENJAMIN THOMPSON, recalled for defendant:

* * * * * * *

Mr. WORKS: Under the stipulation I offer the testimony of William A. Root, in the Illinois case.

486 WILLIAM A. ROOT, a witness for defendant, testified:

* * * * * * *

Mr. WORKS: Under the stipulation, I offer the testimony of Elias R. Bowen, in the Illinois case.

ELIAS R. BOWEN, a witness for defendant, testified:

* * * * * * *

487 & 488 Mr. WORKS: Under stipulation, we offer the testimony of Robert Boyd, in the Illinois case, taken January 31, 1891.

ROBERT BOYD, for defendant, testified:

* * * * * * *

489–491 Mr. WORKS: Under the stipulation, I offer the deposition of Ellen Finter, taken in London, in the Illinois case.

ELLEN FINTER, for defendant, testified:

* * * * * * *

492–494 Mr. WORKS: Under the stipulation I offer the deposition of Clement Le Seur in the Illinois case.

CLEMENT LE SEUR, a witness for defendant, testified:

* * * * * * *

495 Mr. WORKS: Under the stipulation I offer the deposition of Ellen Le Seur, taken in the Illinois case.

ELLEN LE SEUR, a witness for defendant, testified:

* * * * * * *

496 & 497 Mr. WORKS: Under the stipulation we offer the testimony of Alfred P. Wright, in the Illinois case, taken June 18th, 1891.

ALFRED P. WRIGHT, a witness for defendant, testified:

* * * * * * *

498 Mr. WORKS: Under the stipulation I offer the deposition of William O. Cutter, in the Illinios case, taken June 19th, 1891.

WM. O. CUTTER, a witness for defendant, testified:

* * * * * * *

499 Mr. WORKS: Under the stipulation I offer the deposition of Laura Hammond, in the Illinois case, taken June 19, 1891.

LAURA HAMMOND, a witness for defendant, testified:

* * * * * * *

500 & 501 Mr. WORKS: Under the stipulation we offer the deposition of Frank L. Union, in the Illinois case, taken August 14th, 1891.

FRANK L. UNION, a witness for defendant, testified:

* * * * * * *

502 Mr. WORKS: Under the stipulation we offer the deposition of Harriet Union in the Illinois case, taken August 14th, 1891.

HARRIET UNION, a witness for defendant, testified:

* * * * * * *

503 & 504 Mr. WORKS: Under the stipulation we offer in evidence the deposition of Mrs. Morse, taken in the Illinois case.

Mrs. MORSE, a witness for defendant, testified:

* * * * * * *

505–520 VICTOR M. HARDING, a witness for defendant, testified:

* * * * * * *

521 It was in that conversation we discussed this divorce suit, and I said I thought there was nothing to prevent his bringing such a suit in every State in this Union as fast as he could gain domicile in the different States, and cause us untold
522–529 annoyance. He said he certainly would; he would go into every State in the Union, if necessary, to get a divorce.

* * * * * * *

530 I have seen my father in Chicago since the 15th day of May, 1895, as often as I have seen him in previous years there. It is pretty often; every few days sometimes for weeks at a time. I have seen him not every day, but on the street here and there and sometimes at the club, sometimes at his office with more or less frequency. The last year or eighteen months I have not seen him as often as before that.

Q. In reference to the period from May 15th, 1895, until August 1st, 1897, or thereabouts, did you see him frequently in Chicago during that period?

A. Yes, I am positive I saw him frequently because his checks were frequently drawn out of the bank, and I had occasion to refer to him and my brother in reference to them. He occupied
531 an office in Chicago and does to this day. There has never been a period that that office was closed to my knowledge; in fact I knew it has been open because I have had occasion to go there frequently on business.

Q. You say you have frequently found him there?

A. Not at his office latterly. I should say the last two or three years he has not been in his office as much as previously.

Q. I am asking you more particularly in reference to the period between May 15th, 1895, and August 31st, 1897?

A. I should say that there had been no change up to 1898, that since then my father has not been at his office so much, but more at the club and at his home. Sometimes I am told he does not go down town at all.

Q. You think from May 15, 1895, to August 31, 1897, he was about his office with as great frequency as he had been in previous years.

A. Yes, I should say there had been no change.

Q. With what frequency did you see him during the period from

May 15th, 1895, to August 31, 1897, at the old home place, 2536 Indiana avenue?

A. I should say I had seen him off and on an average of several times a week; sometimes for periods of months, two or three months; then I would not see him for months, possibly, and then I would see him again every day, possibly for a week, either down town or at his office. I do not think I have seen him at the house there perhaps more than half as often as I have seen him down town dur-
532–588 ing that period, but I have had occasion; I go down on Indiana avenue and the cars go right along in front of the house; when he is in the front of the house you can see from the front platform of the car where I usually ride—I can see him read his newspaper in bed; he always takes his breakfast in bed. It has been a matter of comment with my sisters and myself that you can see papa, any morning going down town, up in his front room. That is the way I saw him; his blinds are open and he sits in bed reading with his morning robe around him.

* * * * * * *

589 Mr. WORKS: We rest.

Mr. PUTERBAUGH: Under the stipulation we offer in behalf
590 of the plaintiff the certificate of evidence in the case of Adelaide M. Harding against George F. Harding as shown in the record of the Illinois case.

Certificate of Evidence.

Be it remembered that at the January term, A. D. 1897, of this court, the above entitled cause came on for hearing, as stated by the final decree of this court in said cause, duly entered of record herein under date of July 25, 1897, before the Hon. Richard W. Clifford, one of the judges of said court in chancery sitting, and thereupon the said court announced that new evidence would be received upon a hearing in open court in support of and against the several petitions and motions referred to in the said decree.

And thereupon, at such hearing, beginning on January 22, 1897, Mr. John S. Miller and Merritt Starr appearing for the complainant, and Mr. S. P. Shope and Wm. J. Ammen for the defendant, the following evidence was offered and following proceedings had:

* * * * * * *

And the foregoing was all the evidence offered by either party or considered by the court in said cause, and thereupon the court entered its decree in said cause, as appears of record under date of July 26, 1897, to all of which, and every part thereof, said defendant then and there excepted; and in settling the terms of said decree, the attorney for the complainant requested the court to find in such decree that the allegations in the said bill of complaint, as
591 amended herein are true; but the defendant objected to such finding on the ground of the paper filed herein January 3,

1893, and presented to the court by the defendant, and the contents thereof, and on the further ground that such finding was not warranted by the proof; and the court stated that it, the court, had not considered or passed on that question, for it, the court, regarded it as unnecessary, in view of the said paper of defendant, filed herein January 3, 1893; and thereupon such finding was not inserted in such decree.

And inasmuch as the forgoing matters and things do not otherwise appear of record in said cause, the said defendant presents this, his certificate of evidence, and asks that the same may be signed, sealed and filed, and made a part of the record in said cause; which is accordingly done on this 24th day of September, A. D. 1897, as of the 26th day of July, A. D. 1897.

(Signed) RICHARD W. CLIFFORD, [SEAL.]
Judge of said Circuit Court, Cook County.

It is admitted by the defendant, appearing by his counsel Works & Works, that the whole certificate of evidence was offered in evidence, but that the above portion of the certificate of evidence is all that is material to the matters therein referred to and to save costs that portion only of said certificate of evidence is copied into
592 the record, the plaintiff consenting thereto under the admission above made by the attorneys for the defendant.

Mr. WORKS: We object to the offer of the certificate of evidence as incompetent, irrelevant and immaterial, but our objection does not extend to giving a part of the certificate in place of the whole as already admitted.

The COURT: The objection will be overruled.

Mr. WORKS: We except.

Mr. PUTERBAUGH: Under the stipulation we offer the following portion of the Illinois record:

Motion of defendant filed May 13, 1893, "to modify the order of reference entered in the above entitled cause, on May 10, 1892, by striking out the recital therein as to admissions on the part of defendant, as contrary to the facts, and for the reason that the only admissions ever made by defendant in said cause are those made by the statement signed by him and filed in said cause on January 3d, 1893, and for other reasons, and defendant moves the court to otherwise modify said order of reference."

Mr. WORKS: Objected to as incompetent, irrelevant and immaterial.

593 The COURT: Objection overruled.

Mr. WORKS: Exception.

Mr. PUTERBAUGH: Under the stipulation we offer the following portion of the Illinois record:

Order May 13, 1893, "that the motion of defendant to modify order of reference entered on May 10, 1893, be, and hereby is entered and continued."

Mr. WORKS: We object to that on the same grounds.
The COURT: Objection overruled.
Mr. WORKS: Exception.

Under the stipulation we offer in evidence the deposition of Mrs. A. R. Von Louis in the Illinois case.

Mrs. A. R. VON LOUIS, a witness for plaintiff, testified:

* * * * * * *

594–654 Mr. PUTERBAUGH: Under the stipulation, I offer in evidence the deposition of Abner C. Harding in the Illinois case.

ABNER C. HARDING, a witness on behalf of plaintiff, testified as follows:

* * * * * * *

655 Mr. PUTERBAUGH: Under the stipulation we offer in
656–723 evidence the deposition of George F. Harding, Jr., in the Illinois case.

GEORGE F. HARDING, JR., a witness for plaintiff, testified:

* * * * * * *

724–778 Mr. PUTERBAUGH: Under the stipulation we now offer the evidence of Beatrice Harding in the Illinois case.

BEATRICE HARDING, a witness in behalf of plaintiff, testified as follows:

779–824 Mr. PUTERBAUGH: We now offer the testimony of Amelia Niederland in the Illinois case, under the stipulation.

* * * * * * *

AMELIA NIEDERLAND, a witness on behalf of plaintiff testified as follows:

* * * * * * *

825–978 Mr. PUTERBAUGH: Under the stipulation we offer in evidence the deposition of the plaintiff, in the Illinois case.

Plaintiff testified as follows:
The defendant and myself lived together as husband and wife until say about October, 1888, or within ten days of that period. We lived in the same house up to February 1st, 1890.

* * * * * * *

979 Q. What was your Chicago office, and who was in charge since May, 1895?

A. It was a realty office, in charge of my realty, and conducted and in charge of my son exclusively; I was in my office in Chicago after the month of May, 1895, very little—taking no part in the business and only there when litigation or something of that kind compelled my attendance in Chicago.

Q. State what was done at your office in Chicago since 1895, May of 1895, relative to your declaring your residence to be in the city of San Diego?

Mr. WORKS: I object to that as incompetent, irrelevant and immaterial and not rebuttal, and as asking for the conclusion of the witness.

WITNESS: The house was practically closed.

* * * * * * *

980 Q. Is there anything further that you have not stated as to what you did in relation to your residence being in San Diego, California, either at the house or office after the month of May, 1895?

Mr. WORKS: Objected to as incompetent, irrelevant and immaterial.

Objection overruled and exception taken.

A. I am unable to state what I did, more than declarations and notices, and the fact that I was not in the house but a very small portion of the time when I was in the city; slept occasionally in one room, the rest of the time it was closed up, a long time.

* * * * * * *

981–997 Q. You may state whether it is true or not that there was—as stated by Victor M. Harding, a man servant or coachman employed or kept at 2536 Indiana avenue in December last, or at any time since December last?

A. There has not been a man servant employed in that house in five years. The stable was burned out five years ago and has never been restored. The statement of Victor Harding touching it is utterly untrue.

* * * * * * *

998–1000 Q. I believe you stated in your testimony, Mr. Harding that the Paris furniture you had sold to a Mr. Sanders?

A. I did. That sale was consummated on this side of the water, after I returned. Mr. Sanders was Mrs. Von Louis' step-father. Mr. Saunders' deposition or testimony was not taken in the Illinois case. I have not produced him as a witness here, nor his deposition. I would like to explain why. The testimony abruptly stopped with my stipulation of January, 1893, and after that we ceased to desire testimony on the subject of adultery, and that the charges of cruelty were unnecessary—testimony upon that was unnecessary, but put in some and some as to other matters, bearing on—whatever it might be—tickets, furniture, but not immediately though, but that was for greater caution, lest we might be examined—the other side, we expected them to put in proof upon all the issues which had—that were at issue and that were sustained by the supreme court.

In making my explanation I have been referring to the suit for maintenance brought in Illinois in February, 1900.

* * * * * * *

1001 Q. Was her deposition ever taken for use in the Illinois case, or in this case, and was her testimony ever used in either?

A. No, we never got to the taking of our testimony in that case except the testimony of Mrs. Louis—we never got any further on the question of adultery. We got through with Mrs. Louis' testimony. We took hers.

Q. At about this stage then, when the testimony on this adultery issue had been produced from the other side you made this statement which has been introduced in evidence here as a part of the record in the Illinois court?

A. No, it was January 3rd, 1893, and their testimony had been taken in 1890 and early in 1891, I think. There was a lapse of a year or two in the taking of the testimony; and a stipulation was made and we found it unimportant to take it, just as the stipulation states; I stand by that stipulation.

* * * * * * *

1002–1011 WITNESS: I claim San Diego to be my residence up to the present hour, and have claimed that since 1895, May of that year.

* * * * * * *

1012 And this was all the evidence offered in said cause.

1013 *Specifications in Which the Findings Are Not Supported by the Evidence.*

1. The first finding of fact is not justified by the evidence in that the evidence fails to show that plaintiff and defendant cohabited as husband and wife until about the first day of February, 1890, and the evidence does show on the contrary that they did not cohabit as such husband and wife after October, 1888; and the evidence further shows that in said October, 1888, the plaintiff deserted the bed of defendant and did not thereafter cohabit with her.

2. The second finding of fact is not justified by the evidence in that the evidence fails to show that the plaintiff is a *bona fide* resident of the county of San Diego, State of California, or that he has been such resident since the 15th of May, 1895, or that he has at all been such resident; but on the contrary the evidence shows that the plaintiff is not now and that he never has been a *bona fide* resident of the State of California.

3. The second finding of fact is further not justified by the evidence in that the evidence fails to show that plaintiff has been a resident of the State of California for more than one year and of said

county of San Diego for more than three months immediately preceding the commencement of this action and the filing of
1014 the complaint herein; but, on the contrary, the evidence shows that the plaintiff is not now and that he never has been a *bona fide* resident of either the county of San Diego, or State of California.

4. The third finding of fact is not justified by the evidence in that the evidence fails to show that on or about the first day of February, 1890, the defendant disregarding the solemnity of her marriage vow did wilfully or without just cause or at all, desert and abandon, or desert or abandon the plaintiff; but, on the contrary, the evidence shows that the defendant did not desert or abandon the plaintiff as set forth in said finding on the 1st day of February, 1890, or at any other time, or at all.

5. The said third finding of fact is further not justified by the evidence in that the evidence fails to show that ever since the first day of February, 1890, defendant has and continues to, or has or continues to, wilfully and without just cause, or wilfully or without just cause, or at all, desert and abandon, or desert or abandon plaintiff, and to live separate and apart from him without any sufficient cause or reason, and against his will and without his consent; but on the contrary the evidence does show that the defendant never did desert or abandon the plaintiff; and the evidence further shows that in living separate and apart from the plaintiff she did so with good and sufficient cause and reason, and not otherwise.

1015 6. The fourth finding is not sustained by the evidence in that the evidence fails to show that all the allegations in the complaint are true, but that it shows that many of such allegations are untrue; nor does the evidence show that all the allegations, averments and denials in the pleadings of the defendant in conflict with the allegations in said complaint are untrue; but on the other hand the evidence substantiated and proved many of said allegations.

7. The evidence shows that by a decree of the court of last resort of the State of Illinois in an action between the plaintiff and defendant, in which said action the defendant herein was plaintiff and the plaintiff herein was defendant, the cause of action attempted to be set forth in the complaint herein was adjudicated between said parties, there being no other parties to said action in Illinois; that said judgment or decree was rendered in an action brought by defendant herein for separate maintenance under a statute of said State of Illinois, and said court of last resort of said State of Illinois decided that the defendant herein was living separate and apart from the plaintiff herein after the said alleged desertion complained of in the complaint without any fault or wrong on her part; that said decision of said court of last resort of Illinois, is and has been for several years, and long prior to the trial of this action, binding between the said parties, in full force and effect, unreversed, and that there is no power of appeal from the same.

1016 *Specifications of Error.*

Defendant specifies the following particular errors in law occurring at the trial and excepted to by her.

1. The court erred in ordering and rendering judgment in favor of plaintiff.

2. The court erred in each of its conclusions of law.

3. The court erred in its first conclusion of law.

4. The court erred in its second conclusion of law.

4. The court erred in overruling the objection of the defendant to the introduction of any evidence in said action, which said objection was made on the ground that the alleged cause of action set forth in the complaint was and is barred by the provisions of subdivision 3 of section 124 of the Civil Code of the State of California, and in permitting the introduction of such evidence.

6. The court erred in sustaining the objection of plaintiff to the following question propounded plaintiff by defendant's counsel when plaintiff was on the witness stand, to-wit: Q. I wish you would state to the court in a few words the general tenor of the offer you made? said question having been with reference to a certain business

1017 offer said to have been made by plaintiff to the mayor and common council of the city of Chicago.

7. The court erred in overruling the objection of the defendant to the following question asked the witness Van Meter: "Mr. Van Meter, did you present this deed to Mrs. Harding?" and in permitting said question to be answered.

8. The court erred in overruling the objection of the defendant to the following question asked the witness Amelia Neiderland: "Did you ever see Mr. Harding angry in the house?" and in permitting said question to be answered.

9. The court erred in overruling the objection of the defendant to the following question asked the witness Amelia Neiderland: "During all the time that you were in the house Mr. Harding never got mad or got angry or scolded?" and in permitting the witness to answer said question.

10. The court erred in permitting the witness George F. Harding, Junior, to testify to certain articles which were alleged to have been taken from the house 2536 Indiana avenue in the city of Chicago, when defendant left there in February, 1890.

11. The court erred in allowing the witness Beatrice Harding to testify that defendant took certain articles from the house in Chicago when she left there February 1, 1890.

1018 12. The court erred in admitting in evidence the correspondence between Lucius J. Henderson and the defendant, and erred in overruling the objections of the defendant to the admissibility thereof, and to each of the letters in said correspondence.

13. The court erred in sustaining the objection of plaintiff to the evidence of Kate Coughlin offered to show the intimacy existing between the plaintiff and Mrs. Von Louis and erred in striking out said testimony.

14. The court erred in excluding evidence offered by the defendant to prove by family declarations and general family knowledge that Mrs. Von Louis was not a relative of Mr. Harding.

15. The court erred in denying motion of defendant to strike out that portion of the testimony of the witness Van Meter referring to the presentation by him of a certain deed to Mrs. Harding for her signature and detailing the conversation which took place between said Van Meter and Victor Harding and between the said Van Meter and defendant.

16. The court erred in permitting the introduction of testimony by the plaintiff in his examination of witnesses in chief and in his opening case, tending to show the conduct and acts of the plaintiff and the defendant toward each other, and tending to show the condition of affairs of the household of the plaintiff and defendant prior to the period of the alleged desertion, and erred in over-
1019 ruling the objections of the defendant to such testimony, and erred in denying motions of defendant to strike out such testimony when given.

17. The court erred in sustaining the following objection of the plaintiff to a portion of the testimony of the defendant: "We object to that portion of the testimony just read, beginning, 'I went to Onset that summer' and ending, 'I did not go to the other hotels at Onset that year,' on the ground that it is not the best evidence and hearsay, and also giving the opinion of the witness as to the book or whatever she saw there being a register."

18. The court erred in overruling the objection of the defendant to the question asked the defendant, "Did you ask him to employ detectives," and in permitting said question to be answered.

19. The court erred in sustaining the motion of the plaintiff to strike out the following portion of the testimony of the witness Katie Coughlin: "So when I went away she said she was anxious for it to happen, said she hoped it would be a boy, said her uncle said he would settle any of his houses and lots on him if it be a boy. The next time I came she said 'I don't think it will be long now.' She was anxious to have it over because she was going away as soon as it was. She asked me to go abroad with her."

20. The court erred in sustaining the motion of the plaintiff to strike out that portion of the testimony of the witness Katie
1020 Coughlin as follows: "Said 'uncle gave her $50 a week.' She said he was very wealthy."

21. The court erred in sustaining plaintiff's motion to strike out the following portion of the testimony of the witness Anna Galvin as follows: "colors; after we went down to 31st street we made a 'gray one for her; that was going out of mourning. After Men-'tone, I saw her once on 31st street and then walking on Michigan

"avenue. I think two years ago, stopped and spoke with us and "asked us to come and see her; it was up near 32nd. where she "lived. We liked her very much, she was always so sweet and "nice; she was a lovely lady; she seemed very nice to us. She al- "ways paid her bills. I never saw her spend any money. She lived "very nicely. The work at our shop in the summer was probably "in June, 1888, right after that in winter. Knew her probably six "months all together. Her uncle called upon her in the afternoon, "called twice, the servants always answered the bell. We took all "our meals there; didn't usually have wine; couldn't say what she "had on her table; her closet where she had her dresser was right "off the work room; every day showed us something new, and she "had beautiful clothes; those were things she had before she was in "mourning. We thought she was a countess, and until I read the "name in the paper I never dreamed that she was not."

1021 22. The court erred in sustaining the motion of the plaintiff to strike out that portion of the testimony of the witness Anna Galvin, as follows: "I think she said she was going to Cali- "fornia when we were sewing for her; getting her things ready to go."

23. The court erred in sustaining the motion of the plaintiff to strike out that portion of the testimony of the witness Victor M. Harding as follows: "She told me that she had made discoveries "that a certain woman had been supported by my father, that he "had a family, another family, an illegitimate family, and she be- "lieved her rights as a wife and those of her children to be insecure "if she deeded away any property."

24. The court erred in sustaining objections of the plaintiff to the testimony offered and questions asked by the defendant for the purpose of showing by the declarations of an aged member and head of the family that Mrs. Von Louis was not a relative of the plaintiff as claimed by him, and the court erred further in sustaining objections to offers of testimony and questions propounded for the purpose of proving a want of relationship between the plaintiff and Mrs. Von Louis by general family repute, declarations and knowledge.

25. The court erred in sustaining the motion of plaintiff "to ex-
clude all that portion of the answer alluding to his brother,"
1022 his motion having been directed to an answer of the witness Victor M. Harding as follows: "That was another reason "that he gave, but he allowed my brother George to go back, so I "thought that was not the real reason. I knew that was not the "real reason."

26. The court erred in sustaining the objection of the plaintiff to the following question asked the witness Victor M. Harding: "I "will ask how long George had been in attendance at Harvard, and "under what circumstances, prior to the time he was sent back at "this time."

27. The court erred in sustaining the objection of the plaintiff to the following question asked the witness Victor M. Harding: "Be- "fore this controversy came up between yourself and your father

"with reference to the question as to whether or not you should go "to the law school, was anything said between you as to whether or "not you were to be returned to the law school after finishing your "regular course?"

28. The court erred in sustaining the objection of the plaintiff to the following question asked the witness Victor M. Harding: You "have been asked as to whether money was scarce with your father "during the year 1888 or 1889; I will ask you whether or not "money was scarce with him during that time, and I will ask you
"to state in your answer any expenditures that he may have
1023 "made during that time as going to show whether money
"was scarce with him?"

29. The court erred in overruling the objection of defendant to the offer made by the plaintiff of the certificate of evidence in the transcript of the proceedings in the Illinois court, and in receiving said certificate of evidence in evidence.

30. The court erred in denying the motion of the defendant to strike out that portion of the testimony of the witness Abner C. Harding as follows: "I do not remember just at this moment her "precise words. Her reasons to my mind were extremely unsatis- "factory. I know this much that the girls were in perfect familiar- "ity with her alleged proofs to my astonishment, having seen what "she claimed were proofs, some documents or other that have been "in this case. I can remember that Susie astonished me in that "way."

31. The court erred in denying the motion of the defendant to strike out the following portion of the testimony of the witness Abner C. Harding: "There were other conversations aside from that, "a great number of conversations. I accused her of having told the "girls things about the boys, things that they never should have "known—these younger girls. Because the girls threw things up "in the boys' faces which might or might not be true, but probably
"were not, and they ought never to have been in possession
1024 "of the girls as possible facts, or the existence of such things
"ought not to have been in the girls' minds. I told her she was "poisoning the girls against their brothers, and that she was making "an irreparable breach between us, and that aside from all that, "whether the boys quarrelled with the girls for life, it was placing "the girls where they could never look with decency and respect on "any man, and the girls at that time were full of notions that all "men were simply vile, and that the vilest of the vile lived in that "house, and that one of them lived up above us. This is what I "told my mother that the girls had told the boys and she defended "them. She attacked the whole Harding family in substance and "in detail."

32. The court erred in denying the defendant's motion to strike out the following portion of the testimony of the witness George F. Harding, Jr.: "I heard my mother mention the subject of scandal- "ous reports in connection with Mrs. Fuller and Mr. Henderson;

"she said that she didn't believe anything was wrong; she said that "Mr. Fuller had forbidden Mr. Henderson the house, on the ground "that there was something wrong between them; her reference to "this was prior to the trouble in our family, and she said she did "not believe the truth of the scandalous report."

33. The court erred in denying the defendant's motion to
1025 strike out portions of the testimony of the witness Beatrice Harding, said motion to strike out being as follows: "I object "to and move to strike out that part of the testimony beginning "with the words 'Do you know of your father's aiding Amelia,' "down to including the words 'A. What papa feels—I think that "'he loves her just the same,' on the ground that it is incompetent, "irrelevant and immaterial and not tending to support any issue in "this case."

34. The court erred in overruling the objection of the defendant made to certain testimony and to certain questions tending to bring out testimony with reference to the alleged relations between Mrs. Fuller and Lucius J. Henderson, and in permitting said questions to be answered and in permitting said testimony to remain in the record.

35. The court erred in denying the motion of the defendant to strike out that portion of the testimony of the plaintiff as follows: "She has not been a good wife, quite otherwise. To state the facts "is very disagreeable. There are many ways in which I could "amplify that statement. If I were to single out any one, I should "refer to her desire and determination to live abroad, away "from her husband, and to her relations to Lucius J. Henderson "and to others and to her refusal to execute the necessary exten- "sions of mortgages upon which the fortune of her husband was "at stake."

1026 36. The court erred in overruling the objection of the defendant to and denying the defendant's motion to strike out the following portion of the testimony of the plaintiff: "In 1872 I "cabled her $1,000 to pay her expenses home from Vienna. I sent "also other money for that purpose. She was in Vienna with her "family and brought home that money without my knowledge, "leaving me to pay the bills, and under the impression that she "had expended it, compelling me to pay, for example, a very large "additional sum for her passage home upon the Cunard Steamship "Company line, which passage she had got upon credit, claiming that "she had not the money to pay it. The total claimed by the Cunard "company, I have forgotten exactly, my recollection is it was about "$500 to $800—$200 or $300 at least in excess of the passage money "if paid in advance; this additional expense was entailed on me "because the money sent her was not used as she was directed to "use it; instead she brought it home without my knowledge, leav- "ing me to pay this and other bills for which it was sent."

37. The court erred in denying the motion of the defendant to strike out that portion of the testimony of the plaintiff as follows:

"He is as mild mannered a man as I ever saw towards them and as
"gentle as I know of; I am sure that Mrs. Harding has always said
"that he was as kind a son as she had, and so far as kindness
1027 "was concerned quite beyond Victor in that particular and I
"can say the same thing; he is the very last one to do any-
"thing of that kind."

38. The court erred in denying the motion of the defendant to strike out that portion of the testimony of the plaintiff as follows: "I am "sure that Mrs. Harding has always said that he was as kind a son "as she had, and so far as kindness was concerned quite beyond "Victor in that particular and I can say the same thing; he is the "very last one to do anything of that kind."

39. The court erred in denying the motion of the defendant to strike out that portion of the testimony of the plaintiff as follows: "Q. There has been some testimony about Mrs. Harding's trip "abroad and the moneys expended by her, and certain notices served "withdrawing the notices that commissions would be sued out to "take depositions. State your personal knowledge as to these mat-"ters? A. I personally notified Gen. Stiles that the testimony could "not be taken in Buda Pesth and afterwards in Yokohama, but I "gave him careful notice in that first instance immediately upon my "return from Massachusetts, and then learned for the first time that "Mrs. Harding had gone with her children across the ocean and "urged him to telegraph her or advise her at once that we could "not have our witnesses present and could not go on at that time. "This talk with Gen. Stiles was while Mrs. Harding was on the
"ocean, three or four days after she had sailed from New
1028 "York; we afterward served a careful written notice, which
"we have here, upon him. Gen. Stiles said that he could "reach Mrs. Harding and would advise her at once, and afterwards "told me that he had done so. She could have expended nothing "in that trip up to that date, except the cost of going abroad, of "crossing the ocean both ways; her own personal expenditures or "that of any one attorney, could not have exceeded $300 at the "time; she was down East when she went abroad after taking the "testimony at Onset bay; she was advised as I state."

40. The court erred in overruling the objection of the defendant to the following question asked the plaintiff: "You may state to "the court whether the niece therein referred to was the Mrs. "Von Louis in question," and in permitting said question to be answered.

41. The court erred in overruling the objection of the defendant to the following question asked the plaintiff: "Did Mrs. Louis "marry again in 1888 or 1889, and live abroad only visiting "Chicago at times thereafter?" and in permitting said question to be answered.

42. The court erred in denying the motion of the defendant to strike out the answer of the plaintiff as follows: "That is my in-"formation; that she married and lived abroad and married a

"brother of her first husband," said answer being the answer
1029 to the question referred to in the specification last above set forth.

43. The court erred in overruling the objection of the defendant to the following question asked the plaintiff, "State what was done "at your office in Chicago since 1895, May of 1895, relative to your "declaring your residence to be in the city of San Diego," and in permitting said question to be answered.

44. The court erred in denying the motion of the defendant to strike out the following answer of the plaintiff to the question referred to in the specification last above set forth: "The house was practically closed."

45. The court erred in overruling the objection of the defendant to the following question asked the plaintiff, "Is there anything "further that you have not stated as to what you did in relation to "your residence being in San Diego, California, either at the house "of office after the month of May, 1895? and in permitting said question to be answered.

46. The court erred in denying the motion of the defendant to strike out the following answer of the plaintiff to the question referred to in the specification last above set forth: "I am unable to 'state what I did, more than declarations and notices, and the fact that
"I was not in the house but a very small portion of the time
1030 "when I was in the city; slept occasionally in one room, the "rest of the time it was closed up, a long time."

47. The court erred in refusing to permit the defendant to compel the plaintiff to make answer to a certain question as shown by such ruling set forth in the following excerpt from the transcript of the proceedings in said case: "Q. You think it was a conspiracy between "them—have you any facts you can state to the court upon which "you base your belief there was a conspiracy? A. Yes. Q. I "would like to have you state those facts. A. If the court wants "me to rehearse this evidence—The COURT: I think he has been all "over this ground—been rehearsing the facts for the last two weeks "between you. Mr. WORKS: I understand the court does not desire "to have him answer then? The COURT: No, sir. Mr. WORKS: I "except to the ruling. The COURT: The examination has extended "far enough in that direction."

48. The court erred in denying the motion of the defendant to strike out the following statement of the plaintiff made on the stand: "I would like to add to that answer an explanation; I understood "the relation was much closer before investigation, that she was "really a niece in the first instance, and was so advised."

49. The court erred in denying the following motion of the
1031 "defendant to strike out "I move to strike out that portion "of it which relates to what he was advised as being hearsay "and not responsive to any question," the said motion having been directed to the statement of plaintiff in the specification last above set forth referred to.

50. The court erred in overruling the objection of the defendant to the following question asked the plaintiff, "Referring to the "mortgages which you were asking Mrs. Harding to sign as exten- "sions, had she not previously joined with you in the execution of "such mortgages?" and in permitting said question to be answered.

51. The court erred in overruling the objection of the defendant to the following question asked the plaintiff, "At that time there "was nothing asked of her in the way of encumbering her interest "in your estate further?" and in permitting said question to be answered.

The foregoing bill of exceptions is hereby settled and allowed as correct, this 30th day of July, 1901.

N. H. CONKLIN,
Judge of the Superior Court.

Endorsed: Filed July 30, 1901. Will H. Holcomb, clerk, by Walter M. Edwards, deputy.

1032 Title of Court and Cause.

Certificate to Judgment Roll.

C. C. P., sec. 670.

I, the undersigned, county clerk of the county of San Diego, State of California, and *ex-officio* clerk of the superior court in and for said county, do hereby certify the foregoing to be a true copy of the judgment entered in the above entitled action, and recorded in Judgment Book 19 of said court, at page 280. And I further certify that the foregoing papers hereto annexed, constitute the judgment roll in said action.

Witness my hand and the seal of said court, this 1st day of February, 1901.

WILL H. HOLCOMB, *Clerk.*

Endorsed: Filed Feb'y 1st, 1901. Will H. Holcomb, clerk.

Title of Court and Cause.

Notice of Intention to Move for a New Trial.

Take notice that defendant intends to move the court for a new trial in this case, upon the following grounds:

1033 1. Insufficiency of the evidence to justify the decision and that it is against law.

2. That the decision is against law.

3. Errors in law, occurring at the trial and excepted to by defendant.

The said motion will be based upon the papers and files in said action and upon a bill of exceptions to be hereafter prepared.

WORKS & WORKS,
Attorneys for Defendant.

To George F. Harding, the said plaintiff, and Messrs. Puterbaugh & Puterbaugh, attorneys for plaintiff.

(Duly verified.)

Endorsed: Filed Feb. 11, 1901. Will H. Holcomb, clerk, by T. J. Storey, deputy.

Motion for New Trial and Order Denying Same.

Minutes of the court.

TUESDAY, *July 30th*, 1901.

1034 Come the parties by their respective attorneys, and the defendant now moves the court for a new trial in this case, upon the following grounds:

1. Insufficiency of the evidence to justify the decision and that it is against law.

2. That the decision is against law.

3. Errors in law, occurring at the trial and excepted to by defendant.

The defendant introduces in support of his motion the papers and files in said action and a bill of exceptions, prepared and signed by the judge.

The motion is argued by counsel, and submitted to the court, and the court denies the motion, to which ruling the defendant excepts.

Title of Court and Cause.

Notice of Appeal.

Take notice that the defendant in the above-entitled action hereby appeals to the supreme court of the State of California, from the judgment therein given, made and entered in the said superior court, on the 31st day of January, 1901, in favor of the plaintiff in said action, and against said defendant and from the whole
1035 of said judgment, and also from the order denying said de-

fendant's motion for a new trial therein made and entered in the minutes of said court the 30th day of July, 1901.

Yours, etc.,

WORKS & WORKS,
Attorneys for Defendant.

To the clerk of said superior court and M. L. Ward, Esq., attorney for plaintiff.

Dated this 31st day of July, A. D. 1901.

Endorsed: Filed Jul- 31, 1901. Will H. Holcomb, clerk, by T. J. Storey, deputy.

Title of Court and Cause.

Affidavit.

STATE OF CALIFORNIA, *County of San Diego,* } ss:

Walter G. Van Pelt, being duly sworn, says that he is and was at the time of the service of the paper herein referred to, a citizen of the United States over the age of eighteen years, and not a party to the above entitled action; that he served the notice of appeal in said action, which said notice of appeal was duly filed in the office of the county clerk of the county of San Diego, State of California, on the 31st day of July, 1901, upon the plaintiff, by leaving a copy thereof at the office of M. L. Ward, the attorney for said plaintiff; that the said copy was left at the said office of said M. L. Ward between the hours of 9 a. m. and 5 p. m. on said 31st day of July, 1901; that no clerk was in the office of said M. L. Ward, and that no person was in charge thereof at the time when affiant called at said office to serve said notice of appeal, and that affiant left said copy, which was a full, true and correct copy of said notice of appeal, on the desk of said M. L. Ward in his said office in a conspicuous place, between said hours.

1036 & 1037

WALTER G. VAN PELT.

Subscribed and sworn to before me, this 2nd day of August, 1901.

[SEAL.]

LEWIS R. WORKS,
Notary Public in and for the County of San Diego, State of California.

Endorsed: Filed Aug. 2, 1901. W H. Holcomb, clerk, by T. J. Storey, deputy.

* * * * * * *

1038 Received a copy of the within transcript this 7th day of September 1901.

M. S. WARD,
Att'y for Pl'ff and Respondent.

1039 In the Supreme Court of the State of California.

GEORGE F. HARDING
v.
ADELAIDE M. HARDING. } L. A. No. 1170.

1901.
Sept. 10. Filed transcript
" 12. " acknowledgment of service of tran.
Oct. 14. " apps. brief
" 15. " order 30 days granted app. to file.
1902.
Feb. 10. Filed apps. P. & A.
Sept. 20. " resps. brief
1903.
March 18. " apps. reply brief
April 9. Cause argued & submitted
" 22. Filed argument of E. W. Britt
Oct. 17. The judgment is affirmed
Nov. 7. Filed pet. for rehearing
" 16. By the court. Rehearing denied
" 17. Remittitur to county clerk.

1040 And thereupon upon the 17th day of October 1903 the court filed the following opinion in said cause:

GEORGE F. HARDING, Plaintiff and Respondent,
vs.
ADELAIDE M. HARDING, Defendant and Appellant. } L. A. No. 1170.

This action was prosecuted by the plaintiff to obtain a divorce from his wife for her desertion of him. The findings and decree of the court were in favor of plaintiff, and from the judgment of divorce which followed, and from the order refusing her motion for a new trial, defendant appeals.

The parties to the action, at the time of the alleged desertion, resided in Chicago, in the State of Illinois. There in February, 1890, the defendant, for reasons which she believed necessitated this action, had left her husband's home, and ever since has continued to live separate and apart from him. The husband thereafter removed to and became a resident of the county of San Diego, State of California, and there commenced this action. The court determined in

favor of the *bona fides* of his residence, and as this was the determination of a question of fact upon conflicting evidence, that determination here can not be disturbed. Thus in the estate of Newman, 124 Cal. 688, the question was whether the widow of the decedent, claiming administration of his estate, was a resident so as to be entitled to letters. This court said: "This court found in her favor. Her intention constituted the material issue, and there certainly was evidence to support the finding. The difference between this case and the case *In re* Donavan, 104 Cal. 625, is that there the court found against the petitioner as to that fact. In any case, this court must abide the conclusion." In Chicago Railway Co. *vs.* Ohle, 117 U. S. 123, the court say: "There was certainly some evidence
1041 that when Ohle went to Chicago on the 6th of November, he intended to take up his home there at that time, and actually did so. Such being the case, it was error to refuse to charge the jury that this was the fact. It is not for us to decide that the jury brought in a wrong verdict under a correct charge, if the record shows, as it does, that there was some evidence to support the finding which was made." In Hope *v.* Flintge, 140 Mo. 390, the question there being one of residence, the supreme court said: "It was a question of fact in which the intent of the parties largely entered, and the circuit court found that they were residents within the meaning of the law, and that finding we will not disturb."

The same rule must also be applied to the question of the sufficiency of the evidence. It was in sharp conflict, and upon either side was the corroborating evidence of the children, for the house was, unfortunately, divided against itself. The determination of the trial court under these circumstances, that the defendant had been guilty of desertion, can not here be disturbed.

It is earnestly insisted, however, that the question of defendant's alleged desertion was not open to inquiry, but that its consideration had been foreclosed by a judgment of the Illinois court, which judgment operated as an estoppel. The facts in this regard are the following: Shortly after Mrs. Harding left her husband's home, she instituted in the courts of Illinois an action for separate maintenance against her husband, which action the laws of Illinois permit when a wife is living separate and apart from her husband "without any fault upon her part." The action was contested by the husband, and reference was made to a master in chancery for the taking of evidence, and evidence was taken. Finally and before the determination, the husband filed his stipulation in the action,
1042 by the terms of which he conceded his obligation to support his wife; he alleged his confidence in his ability to make good his defense; asserted that it seemed to be in the interest of peace and to end litigation to consent to a decree for such sum as the court might find to be equitable, and expressed his willingness that a degree for separate maintenance should be entered in favor of the plaintiff without a finding or trial of the issue as to whether she was living apart without fault on her part. The stipulation

then proceeded: "To this end, I declare my willingness to stipulate, and I do hereby stipulate that the plaintiff, at the time of the commencement of this suit, was living, and ever since has been living, separate and apart from her husband without her fault, and may take a decree with my consent for such sum as may be reasonable and just for her separate maintenance." Following this stipulation the court made its order of reference to the master "to take evidence and report the same, with his conclusions upon the issue in question, as to the amount or amounts, if any, to be allowed complainant and to be decreed to be paid by the defendant to complainant for alimony, and upon the other issues herein, other than the question as to whether complainant, at the time of the commencement of this action, was, and since that time has been, and is, living separate and apart from her husband, the defendant, without her fault; said defendant having admitted upon the record herein, as by his written stipulation filed herein on January 3, 1893, and *for the purpose of this trial only*, that the complainant was at the time of the commencement of this suit and since that time has been and is living separate and apart from her said husband without her fault." After litigation attending the fixing of the amount, the circuit court of Cook county filed with
1043 its decree its "certificate of evidence," wherein the court declares: "In settling the terms of said decree, the attorney for the complainant requested the court to find in such decree that the allegations in the said bill of complainant as amended herein are true, but that the defendant objected to such finding on the ground of the paper filed herein on January 3d, 1893, and presented to the court by the defendant, and the contents thereof, and on the further ground that such finding was not warranted by the proof; and the court stated that it, the court, had not considered and passed on that question, for it, the court, regarded it as unnecessary in view of the said paper of defendant filed herein on January 3, 1893, (the stipulation above referred to), and thereupon such finding was not inserted in such decree." This statement was provided for in the decree rendered and having been made a part of the record, such certificate itself becomes part thereof. (Rawson *v.* Rawson, 37 Ill. App. 495; Ensminger *v.* Powers, 108 U. S. 292). It was under such circumstances that the decree was given, and it is this judgment which defendant insists raises an estoppel against plaintiff and forbids an inquiry by the courts of this State into the matter of defendant's desertion. But waiving the question as to whether the issue under the Illinois statute, that a wife is living apart from her husband without any fault of her own, is identical with the issue presented under the laws of this State in an action for divorce upon the ground of desertion, still we think the contention of respondent can not be upheld. It is fundamental that no more force is to be allowed to the judgment of a sister State, when raised as a bar by way of estoppel in an action between the parties in another State, than would be accorded to that judgment by the courts of the State which

rendered it, or as Mr. Freeman puts it: "The first question
1044 to be determined in regard to a judgment of another State,
after jurisdictional inquiries have been satisfactorily answered, is what is its effect in the State whence it was taken? The effect which it has there is precisely the effect which must be accorded to it in every other State. It must not be given any greater effect than it has in the State where it was rendered." (2 Freemen on Judgments, sec. 575). By the rule decision in the courts of Illinois adopting that of the English courts, a consent judgment operates to estop the parties no further than is necessary to secure the enforcement of the judgment or decree in the particular matter in which the consent judgment was given, and it is not a bar to any inquiry into the same question in any other action. Thus in Wadhams *v.* Gay, 73 Ill. 417, the syllabus correctly states the decision of the court in the following language: "*Res judicata* is decision of the court upon a contested matter between parties. When a judgment or decree is rendered by consent, or is the result of a compromise, it can not be admitted as *res judicata*." And in the opinion the court quotes with approval the following from the House of Lords in Jenkins *v.* Robinson, 1 H. L. Sc. 117: "The interlocutor in a former action having been the result of a compromise between the parties, it can not be considered as a *judicium*; nor can it be admitted as *res judicata*. * * * In my opinion *res judicata* signifies that the court has, after argument and consideration come to a decision on a contested matter. Here the court exercised no judicial function upon the subject. It merely exercised an administrative function by recording the interlocutor which had been agreed to by the parties." It thus appears from this case that the courts of Illinois will not allow the
application of the doctrine of estoppel to a consent judgment
1045 which merely registers the agreement between the parties,
and the same views are expressed by the highest court of Illinois, quoting at large from the case last above cited, in the late case of Farwell *v.* Great Western Tel Co., 161 Ill. 522.

We are not here considering the doctrine of estoppel as it may be applied to judgments by the courts of this State. Our consideration is limited to the determination of the rule as it obtains in the State of Illinois, for as has been said, no higher efficacy can be given to it by the courts of this State, and it appears, for the reasons stated, that that judgment having been entered into by consent, would not in the courts of Illinois raise the bar of estoppel against the determination of the issue of desertion, which was tried and determined in this State adversely to the appellant.

For the foregoing reasons, the judgment and order appealed from are affirmed.

HENSHAW, *J.*

We concur:

McFARLAND, *J.*

LORIGAN, *J.*

1046 Filed Nov. 16, 1903.
Argd. Due Nov. 16 / 03.

FRANK C. JORDAN, *Clerk*,
By I. ERB, *Deputy*.

In the Supreme Court of the State of California. In Bank.

HARDING
vs.
HARDING. } L. A. No. 1170.

By the COURT:

Rehearing denied, November 16, 1903.

1047 In the Supreme Court of the State of California, Dep't Two.

GEORGE F. HARDING, Resp. and Plain.,
vs.
ADELAIDE M. HARDING, App. and Def't. } L. A. No. 1170. On Appeal from the Superior Court in and for the County of San Diego.

OCTOBER 17, 1903.

And now, at this day, this cause being called, and having been heretofore submitted and taken under advisement by the court, and all and singular the law and premises being by the court here seen, heard, understood, and fully considered, the opinion of the court herein is delivered by

HENSHAW, *J.*

We concur:
McFARLAND, *J.*
LORIGAN, *J.*

Whereupon, it is now considered, ordered, adjudged, and decreed by the court here, that the judgment and order of the superior court in and for the county of San Diego in the above entitled cause, be and the same are hereby affirmed.

Remittitur issued November 17th, 1903.
App. $12.50.

I, Frank C. Jordan, clerk of the supreme court of the State of California, do hereby certify that the preceding and annexed is a true and correct copy of judgment and order denying a rehearing as shown by the records of my office.

Witness my hand and the seal of the court, this 22d day of January, A. D. 1904.

[Seal Supreme Court of California.]

FRANK C. JORDAN, *Clerk*,
By I. ERB, *Deputy*.

[Endorsed:] L. A. No. 1170. In the supreme court, State of California. George F. Harding, resp. & plain., *vs.* Adelaide M. Harding app. & def't.

1048 In the Supreme Court of the State of California.

GEORGE F. HARDING *vs.* ADELAIDE M. HARDING. } L. A. No. 1170. On Appeal from the Superior Court of the County of San Diego.

I, Frank C. Jordan, clerk of the supreme court of the State of California do hereby certify the foregoing to be a full, true and correct copy of the record and proceedings, and the opinion of the court in the above entitled cause, as the same remains of record and on file in the office of the clerk of said court, and that the same constitutes the return to the annexed writ of error.

In testimony whereof I have hereunto set my hand and affixed the seal of the said supreme court of California this 14th day of March, A. D. 1904.

[Seal Supreme Court California.]

FRANK C. JORDAN,
Clerk of the Supreme Court of California.

1049 UNITED STATES OF AMERICA, *ss:*

In the Supreme Court of the United States.

To the honorable justices of the Supreme Court of the United States:

The petition of Adelaide M. Harding respectively shows that on the 17th day of October A. D. 1903 the supreme court of the State of California rendered a final judgment against your petitioner in a certain cause wherein your petitioner was appellant, and George F. Harding was respondent for costs of such proceedings in said court and affirmed a judgment of the superior court of San Diego county in said State of California whereby said superior court ordered, adjudged and decreed that the marriage theretofore existing between George F. Harding and your petitioner be dissolved and each of said parties be freed and absolutely released from the bonds of matrimony and all the obligations thereof; as will appear by reference to the record of the proceedings in said cause, and that said court is the highest court of said State in which a decision in said suit can be had.

Your petitioner claims the right to remove said cause to the Supreme Court of the United States by writ of error under section 709 of the Revised Statutes of the United States because your petitioner

claimed in said superior court of San Diego county and in said supreme court to which said cause was taken on appeal that said suit and all proceedings therein were barred by a decree in a suit in the circuit court of Cook county in the State of Illinois between the same parties entered prior to the commencement of said suit in California and which then was and from thence hitherto has
1050 been and still is in full force and effect unappealed from and unreversed; and your petitioner claims that if full faith and credit as required by section 1, of article IV. of the Constitution of the United States had been given by said superior court of San Diego county and the supreme court of the State of California to said decree the same would have been and in fact is a complete bar to said suit in the said superior court of San Diego county and in said supreme court of California; but faith and credit was denied to said judicial proceedings in said circuit court of Cook county, Illinois and to said decree entered therein, by said superior court of San Diego county and the supreme court of the State of California and by reason of such denial judgment was rendered as aforesaid against your petitioner by both said courts of the State of California to her great wrong and detriment and in violation of the Constitution of the United States as aforesaid as appears by the record of the proceedings in said cause which is herewith submitted.

Your petitioner has attached hereto and presents herewith her assignment of errors committed by said supreme court of California and prays the allowance of a writ of error returnable unto the Supreme Court of the United States and for a citation whereby the proceedings of the supreme court of California in the premises may be reviewed.

And your petitioner will ever pray, etc.

ADELAIDE M. HARDING,
By PLINY B. SMITH, *Her Attorney.*

PLINY B. SMITH,
Attorney for Petitioner, 19–184 *Dearborn St., Chicago.*

1051 In the Supreme Court of the United States.

ADELAIDE M. HARDING, Plaintiff in Error,
vs.
GEORGE F. HARDING, Defendant in Error.
} Writ of Error to the Supreme Court of California.

And now comes Adelaide M. Harding, plaintiff in error by Pliny B. Smith her attorney and says that in the record of proceedings in the above entitled matter there is manifest error in this, to-wit:

1. The supreme court of California erred in affirming the judgment or decree of the superior court of San Diego county, California, thereby contravening the rights of plaintiff in error under the Constitution and laws of the United States.

2. The supreme court of California erred in not reversing the judgment or decree of the superior court of San Diego county California.

3. The supreme court of California erred in not holding and deciding that the superior court of San Diego county, California erred in finding as a conclusion of the law that the plaintiff there (defendant in error here) was entitled to a decree dissolving the bonds of matrimony theretofore existing between the plaintiff and the defendant and decreeing them to be freed and absolutely released from the bonds of matrimony and all obligations thereof.

1052 4. The supreme court of California erred in not holding that the decree of the circuit court of Cook county in the State of Illinois was a bar to said suit and proceedings.

5. The supreme court of California erred in not holding that full faith and credit should be given to the decree and judicial proceedings of the circuit court of Cook county, Illinois, in the case formerly pending there between the plaintiff in error and defendant in error.

6. The supreme court of California erred in not holding that full faith and credit should be given to the said decree and judicial proceedings in the circuit court of Cook county, Illinois, and that full faith and credit being so given said decree would be a bar to said suit in the superior court of San Diego county and in the supreme court of California.

7. The supreme court of California erred in not holding that the superior court of San Diego county erred in finding that the plaintiff in error did willfully and without just cause desert and abandon plaintiff (the defendant in error) and ever since has and so continues to willfully and without just cause desert and abandon the plaintiff and to live separate and apart from him without any sufficient cause or reason.

8. The supreme court of California erred in not holding that the superior court of San Diego county erred in not holding that by said decree of the circuit court of Cook county, Illinois, it had been judicially determined and adjudicated that the plaintiff in error had not willfully and without just cause deserted and abandoned the defendant in error without any sufficient cause or reason.

1053 9. The supreme court of California erred in not holding that by the decree of the circuit court of Cook county, Illinois, it had been judicially determined and adjudicated that the plaintiff in error was living separate and apart from her husband without fault on her part.

10. The supreme court of California erred in not giving full faith and credit to the record and judicial proceedings of the State of Illinois, namely, the said decree and proceedings in the circuit court of Cook county, Illinois, in the suit between the plaintiff in error and the defendant in error.

11. The supreme court of California erred in holding that the giving of faith and credit to the said decree of the circuit court of

Cook county, Illinois, did not require that said decree be held to be an estoppel in said suit.

12. The supreme court of California erred in holding that said decree of the circuit court of Cook county, Illinois, was a consent judgment or decree.

13. The supreme court of California erred in holding that the said decree of the circuit court of Cook county, Illinois, was not a bar to said suit brought in the superior court of San Diego county, California.

14. The supreme court of California erred in falling to give full or due faith and credence to the judgment of the supreme court of Illinois affirming the said decree of the circuit court of Cook county, Illinois.

PLINY B. SMITH,
Attorney for Plaintiff in Error.

1054 [Endorsed:] United Supreme Court. Adelaide M. Harding *vs.* George F. Harding. Petition for writ of error & assignment of errors. Pliny B. Smith, attorney at law, suite 19—184 Dearborn St., Chicago.

1055 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the supreme court of the State of California, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Adelaide M. Harding, appellant, and George F. Harding, respondent, wherein was drawn in question the validity of a treaty or statute of, or an authority excercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in ques-

1056 tion the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said appellant as by her complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be

therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 60 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 15th day of February, in the year of our Lord one thousand nine hundred and four.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
JOSEPH McKENNA,
Associate Justice of the Supreme Court of the United States.

1057 UNITED STATES OF AMERICA, *ss:*

To George F. Harding, Greeting:

You are hereby cited and admonished to be and appear at a supreme court of the United States, at Washington, within 60 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of California, wherein Adelaide M. Harding is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Joseph McKenna, associate justice of the Supreme Court of the United States, this 15th day of February, in the year of our Lord one thousand nine hundred and four.

JOSEPH McKENNA,
Associate Justice of the Supreme Court of the United States.

1058 On this 24th day of February, in the year of our Lord one thousand nine hundred and four, personally appeared before me, the subscriber, M. Patton, and makes oath that she delivered a true copy of the within citation to M. L. Ward, Esq., an attorney for the defendant in error, George F. Harding.

M. PATTON.

Sworn to and subscribed the 24th day of February, A. D. 1904.

[Seal of Minnie Schaffnet, Notary Public, San Diego Co., Cal.]

MINNIE SCHAFFNET,
Notary Public in and for the County of San Diego, State of California.

1059 Know all men by these presents, that we, Adelaide M. Harding as principal, and John S. Miller and Pliny B. Smith as sureties, are held and firmly bound unto George F. Harding in the full and just sum of one thousand dollars, to be paid to the said George F. Harding his certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 13th day of February, in the year of our Lord one thousand nine hundred and four.

Whereas, lately at a supreme court of the State of California in a suit depending in said court, between Adelaide M. Harding appellant, and George F. Harding, respondent a judgment was rendered against the said Adelaide M. Harding and the said Adelaide M. Harding having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said George F. Harding citing and admonishing him to be and appear at a Supreme Court of the United States, at Washington, within 60 days from the date thereof.

Now, the condition of the above obligation is such, that if the said Adelaide M. Harding shall prosecute said writ to effect, and answer all damages and costs if she fail to make her plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) ADELAIDE M. HARDING. [SEAL.]
(Signed) JOHN S. MILLER. [SEAL.]
(Signed) PLINY B. SMITH. [SEAL.]

Sealed and delivered in presence of—

(Signed) VICTOR M. HARDING.

Approved by—
(Signed) JOSEPH McKENNA,
Associate Justice of the Supreme Court of the United States.

1060 Approved:
(Signed) P. S. CROSSCUP,
Circuit Judge.

[Endorsed:] Copy L. A. 1170 Harding *vs.* Harding Bond on writ of error. Filed March 10 1904 Frank C. Jordan, clerk by O. C. Fuller deputy. Copy.

1061 In the Supreme Court of the United States, October Term, 1904.

ADELAIDE M. HARDING, Plaintiff in Error,
vs.
GEORGE F. HARDING, Defendant in Error.
} Error to the Supreme Court of California.

To the clerk of said court:

I hereby beg to state that upon the hearing of the above case I shall rely upon all of the errors, the assignment of which has heretofore been filed in your office.

That the parts of the record which I think necessary for the consideration of said errors, and which you are requested to print, are as follows:

1. Pages 1 to 76, inclusive, of record.

2. That portion of pages 77 and 78 of record commencing with the words on page 77 "Mr. Puterbaugh, I offer the deposition" and including first two lines of page 78.

3. On page 80, commencing with the words in bracket-, "Here follows part of," to "testified as follows."

(I will state as explanatory that various similar excerp-s following are merely for the purpose of showing that certain testimony in the Illinois record was introduced in evidence. You will thus understand what is desired to be printed in connection with different witnesses.)

1062 4. On page 81 same clause in connection with witness, Amelia Neiderland.

5. Pages 82 and 83 same clause in connection with witness George F. Harding, Jr.

6. Page 86 same clause in connection with witness Beatrice Harding.

7. Testimony of George F. Harding commencing on page 92 as far as and including the first line on page 93, also that part of George F. Harding's testimony commencing on page 97 with word "witness" at marginal page 290, and continuing on page 98 to bottom of page.

8. Page 112 commencing with words "plaintiff here rested" at marginal page 334 and all of pages 113 to 196, inclusive.

9. Page 197 as far as "every way comfortable" in line 11.

10. Page 325 the clause in connection with testimony of Adelaide Harding commencing with "Mr. Works" ending with "testified as follows."

11. Page 382 clause in connection with introduction of testimony of Susie Harding same as before.

12. Page 428 same clause in connection with testimony of Katie Coughlin ending with words "taken for defendant."

13. Page 434 same clause in connection with testimony of Maggie Galvin.

14. Same clause in connection with testimony of Anna Galvin.

15. Same clause in connection with testimony of G. W. Brayton.

1063 16. Page 452 same as to J. J. Thiesen.

17. Page 456 and 457 same as to testimony of Edward Iverson.

18. Page 457 same as to same witness recalled.

19. Page 459 same clause as to testimony of William Reed.

20. Page 462 same as to same witness.

21. Page 465 clause relating to testimony of Clara E. Taylor.

22. Page 468 same as to testimony of Cartherine Wren.

23. Page 469 same as to testimony of Arthur C. Blayney.

24. Page 472 same as to testimony of William A. McLean.

25. Page 476 same as to testimony of Benjamin Thompson.

26. Page 477 same as to testimony of Charles B. Wright.

27. Page 482 same as to testimony of Edward P. Harris.

28. Page 483 same as to testimony of R. W. Iverson.

29. Page 485–6 same as to testimony of William A. Root.

30. Page 486 same as to testimony of Elias R. Bowen.

31. Page 487 same as to testimony of Robert Boyd.

32. Page 489 same as to testimony of Ellen Finter.

33. Page 492 same as to testimony of Clement Le Seur.

34. Page 495 same as to testimony of Ellen Le Seur.

35. Page 496 same as to testimony of Alfred P. Wright.

36. Page 498 same as to testimony of William O. Cutter.

37. Page 499 same as to testimony of Laura Hammond.

38. Page 500 same as to testimony of Frank L. Union.

39. Page 502 same as to testimony of Harriett Union.

40. Page 503 same as to testimony of Mrs. Morse.

41. Testimony of Victor M. Harding commencing on page
1064 521 with words "It was in that conversation," fifth line from bottom, and page 522 as far as words "to get a divorce" in third line, and being page 530 commencing with words "I have seen" in line 15, all of pages 531 and 532 to end of first paragraph.

42. Page 589 commencing with words "Mr. Works, we rest" and pages 590, 591, 592 and 593 to and including 4th line from the bottom.

43. Page 594 clause in connection with introduction of testimony of Abner C. Harding.

44. Pages 655 and 656 same clause as to testimony of George F. Harding, Jr.

45. Page 724 same clause as to testimony of Beatrice Harding.

46. Page 779 same clause as to testimony of Amelia Neiderland.

47. Page 825 as far as figures "1890" in 9th line.

48. Page 1002 testimony of George F. Harding, being the first four lines of the last seven lines of the page.

49. Page 1012, the last line on the page.

50. All of pages 1013 to 1035 inclusive as far as and including "T. J. Storey, deputy."

PLINEY B. SMITH,
Attorney for Plaintiff in Error.

Received copy of the foregoing this 30th day of June 1904.

WM. J. AMMEN,
Per A. B. JOYNER.

1065 [Endorsed:] Supreme Court of United States. Adelaide M. Harding, plaintiff in error, *vs.* George F. Harding, defendant in error. Statement *re* printing. Office of the clerk. Received Jul- 7, 1904. Supreme Court, U. S. Office of the clerk. Received Jul- 2, 1904. Supreme Court, U. S. Pliny B. Smith attorney at law suite 19—184 Dearborn St. Chicago.

1066 [Endorsed:] File No. 19296. Supreme Court U. S. October term, 1904. Term No. 222. Adelaide M. Harding, pl'ff in error, *vs.* Geo. F. Harding. Designation by pl'ff in error of parts of record to be printed & acceptance of service of same. Filed July 7, 1904.

1067 In the Supreme Court of the United States, October Term, 1904.

ADELAIDE M. HARDING, Plaintiff in Error, *vs.* GEORGE F. HARDING, Defendant in Error.	Error to the Supreme Court of California.

To the clerk of said court:

The defendant in error, in the above entitled cause, hereby states that he thinks it necessary for the consideration of said errors and hereby requests said clerk to print the following additional parts of the record, in said cause, omitted by said plaintiff in error, viz.:

(1.) Pages 93 to 97, beginning on the second line of page 93 and ending with the signature "George F. Harding" on page 97, line ten.

(2.) Page 109, beginning on the fourth line from the bottom; and pages 110 and 111 and 112 down to the third line inclusive.

(3.) Page 979, beginning at the fourth line and ending at the words "the house was practically closed."

(4.) Page 980, ending with the words "a long time" at middle *pf* page.

(5.) Page 981 beginning at 13th. line and ending with the word "untrue" in the fifth line from the bottom of that page.

(6.) Page 998, beginning with the 8th. line.

(7.) Beginning with the third line on page 1001, ending with 21st. line.

WILLIAM H. BARNUM,
Attorney for Defendant in Error.

Received copy of above designation of part of record to be printed this — day of September, A. D. 1904.

——— ———,
Attorney for Plaintiff in Error.

1068 STATE OF ILLINOIS, } ss:
County of Cook, }

Albert B. Joyner being first duly sworn deposes and says that he served the within designation of portions of record to be printed on Pliny B. Smith attorney for plaintiff in error named therein by delivering a true copy thereof to E. T. Thompson a person in charge of the office of said Pliny B. Smith this 24th day of September 1904.

ALBERT B. JOYNER.

Subscribed and sworn to before me this 24th day of September A. D. 1904.

ROBERT HUMPHREY,
Notary Public.

[Endorsed:] In the Supreme Court of the United States, October term 1904 Adelaide M. Harding plaintiff in error *vs.* George F. Harding defendant in error Designation by defendant in error of portion of record to be printed. William H. Barnum att'y for defendant in error.

1069 [Endorsed:] File No. 19,296. Supreme Court U. S. October term, 1904. Term No. 222. Adelaide M. Harding P. E. *vs.* Geo. F. Harding. Designation by def't in error of parts of record to be printed & affidavit as to service of same. Filed Sept. 26, 1904.

Endorsed on cover: File No. 19,296. California supreme court. Term No. 222. Adelaide M. Harding, plaintiff in error, *vs.* George F. Harding. Filed April 4th, 1904. File No. 19,296.